

HEARING BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION
SITING COMMITTEE

Stakeholder Hearings on)
Energy Facility)
Permitting Changes to) Docket No. 99-SIT-6
the Siting Process)

HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 13, 1999

9:35 a.m.

Reported By:

Debi Baker

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

David A. Rohy, Commission Vice Chair
Second Member

Bob Eller, Commissioner Advisor

Steve Williams, Commissioner Advisor

PUBLIC ADVISER

Robertta Mendonca

STAFF PRESENT

Terrence O'Brien

Bob Therkelsen

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Ladies and
3 gentlemen, good morning.

4 My name is Robert Laurie, Presiding
5 Member of the Siting and Environmental Committee.
6 To my right is Vice Chairman David Rohy, my
7 associate on the committee. To Commissioner
8 Rohy's right is Bob Eller, Commissioner Rohy's
9 Senior Advisor, and to my left is my Advisor,
10 Steve Williams.

11 The purpose of today's meeting is to
12 seek public input on proposed changes to the
13 siting process, both statutory changes in the
14 Warren-Alquist Act, and regulatory changes to the
15 Energy Commission's siting regulations.

16 Let me ask if, Commissioner Rohy, do you
17 have any opening comments before I ask for
18 comments from siting staff?

19 COMMISSIONER ROHY: Thank you,
20 Commissioner Laurie. I have no comments right
21 now.

22 PRESIDING MEMBER LAURIE: Thank you.

23 Mr. Therkelsen.

24 MR. THERKELSEN: I'm going to turn it
25 over to Terry O'Brien, our Project Manager on

1 this.

2 PRESIDING MEMBER LAURIE: Thank you.
3 Mr. O'Brien.

4 MR. O'BRIEN: Commissioners, we have
5 before us today --

6 PRESIDING MEMBER LAURIE: Can the
7 audience hear? Terry, with these microphones you
8 really have to get close.

9 Not that close.

10 MR. O'BRIEN: Okay. All right.

11 Commissioners, we have before us today a
12 packet of information that was mailed out to
13 approximately 300 individuals on a mailing list
14 that we compiled for this proceeding. Back in May
15 the committee held a hearing in which it invited
16 comments from stakeholders on changes to the
17 siting process, and since that time SB 110 has
18 been signed into law, which mandates that the
19 Commission provide a report to the governor and
20 the legislature by the 31st of March of next year
21 recommending changes to our process.

22 And so this hearing provides an
23 opportunity for stakeholders to provide input to
24 the committee on what changes they would like to
25 see made to the Energy Commission's siting

1 process.

2 In that packet of information which we
3 mailed out, which is available on the table at the
4 front of the -- or the back of the room, there are
5 specific changes recommended to the Warren Alquist
6 Act, and to the siting regulations. And, in
7 addition, attached to that package are changes
8 that the staff has already implemented over the
9 last 24 months, administrative changes.

10 So we're interested today in hearing
11 from the various parties as to their comments, not
12 only on those lists of changes that we have put
13 forward in the matrices, but in addition any other
14 suggested changes that they might have to the
15 process.

16 I would also note that we're going to
17 have a sign-in sheet available a little later, and
18 that'll be passed around, and we'd like people to
19 sign that -- sign that so that we can make sure
20 they're on the mailing list.

21 PRESIDING MEMBER LAURIE: Thank you.

22 We should note that this meeting is
23 being recorded, so we will ask all comments to be
24 made into the recording microphone. And when you
25 do that, we will ask that you identify yourselves,

1 please.

2 I will have additional opening comments,
3 but at this time I would like to call upon the
4 Public Adviser, Ms. Roberta Mendonca.

5 PUBLIC ADVISER MENDONCA: Good morning,
6 Mr. Chairman and Commissioner Rohy.

7 The Public Adviser's Office provided
8 some of the names for the mailing list, and in
9 addition we went through our roster of people who
10 have either intervened or formally participated in
11 the siting process, and came up with 57 additional
12 names.

13 We mailed the information that Terry
14 O'Brien mailed out to these 57 people, and
15 included a matrix that was blank for them to
16 return. And this morning I have comments from ten
17 intervenors that I will enter at the appropriate
18 time, and there are also some members of the
19 participating public here this morning.

20 Thank you.

21 PRESIDING MEMBER LAURIE: Thank you. Is
22 it your intent to -- matter of fact, why don't
23 you, for the purposes of the record, provide the
24 identity of those persons or organizations
25 providing input. There's no necessity to read the

1 input into the record, but please provide
2 identification for those.

3 PUBLIC ADVISER MENDONCA: Yes. Ellen
4 Stirtz, from Morro Bay; Allen Ramo, I believe in
5 the Metcalf area; Gary Ledford, from the High
6 Desert Project; Joan Wood, lives in San Francisco
7 and became involved with the Sutter Project;
8 Michael Stanley Jones, with the Green Party; Joe
9 Hawkins, with Delta Energy; ISA, with the Metcalf
10 Project; Mike Boyd, with the Delta Project; Marci
11 Crockett, with Three Mountain; Mr. Williams, with
12 the Metcalf Project; and the public, Bill --
13 what's your last name?

14 I'm sorry, I didn't get the last name.

15 MR. GARBETT: William Garbett.

16 PUBLIC ADVISER MENDONCA: William
17 Garbett, with the Metcalf.

18 And some are still coming in, so if they
19 do come in and I'm given copies, I will enter
20 their names in the record.

21 PRESIDING MEMBER LAURIE: Okay. I need,
22 I don't see a Hearing Officer or a member of the
23 General Counsel's staff. Yes, I do.

24 Ladies and gentlemen of the audience,
25 let me offer a comment here that's important in

1 this proceeding.

2 As you are all aware, there are
3 currently public hearings going on for individual
4 siting cases. And some of you are participants,
5 some of you are even intervenors in the siting
6 cases.

7 Ms. Mendonca, can I have your attention
8 on this point for a moment?

9 We must not, we cannot accept testimony
10 or comment on those individual siting cases. We
11 would encourage you to offer comment on our
12 process in general. But we must not, because
13 Commissioner Rohy and I are not permitted to talk
14 about what's going on in some other case.

15 So if you want to talk about process in
16 general, regulations in general, statutes in
17 general, well, that -- that's why we're here. But
18 except for those siting cases that have been
19 completed, please do not make reference to any
20 ongoing siting case.

21 Okay. Ms. Mendonca, is that consistent
22 with your understanding of the law?

23 PUBLIC ADVISER MENDONCA: It certainly
24 is. And I would comment that I plan to read
25 through as each item is brought up, and basically

1 use the format that was sent out to the public as
2 the basis for the comments that I will be making
3 on behalf of these intervenors.

4 PRESIDING MEMBER LAURIE: Okay. Thank
5 you.

6 So as members of the public choose to
7 speak, and if you make reference to a case, I'm
8 going to cut you off. Not from your -- not from
9 the rest of your testimony, but from that point,
10 because it has an impact on that case. Okay?

11 For purposes of -- sir, do you have a
12 question on that point?

13 MR. WILLIAMS: Well --

14 PRESIDING MEMBER LAURIE: Please come up
15 to the microphone and identify yourself, please.

16 MR. WILLIAMS: With your permission, I'm
17 Robert Williams. I'm a retired engineer, ten
18 years with General Electric, twenty years with
19 Electric Power Research Institute.

20 I'd like to make a brief opening
21 statement at the appropriate time, and distribute
22 to the -- the Siting Panel the contents of some
23 letters I have.

24 PRESIDING MEMBER LAURIE: Okay. Well,
25 that -- that's fine. You're a member of the

1 public, you will -- you will be called upon to do
2 that.

3 MR. WILLIAMS: Thank you.

4 PRESIDING MEMBER LAURIE: Okay.

5 For purposes of the process that we're
6 going to follow, the public should be advised that
7 Commissioner Rohy and I, as the committee, will
8 meet and review the comments that we receive
9 today. We will then process a second set of
10 proposed revisions and make those available to the
11 public and stakeholders sometime -- and then hold
12 another committee hearing in late January.

13 The committee will then submit its
14 proposed recommendations to the full Commission,
15 we anticipate in mid-February, and there'll be a
16 comment period permitted on those proposed
17 revisions.

18 We would anticipate that the Commission
19 will consider the committee's recommendations in
20 early March at a full business meeting. The
21 Commission will then submit its recommendations on
22 changes in a report to the governor and the
23 legislature no later than March 31st.

24 As part of this process, the full
25 Commission tomorrow -- correction, on December

1 15th, will consider adopting an OIR, an Order
2 Instituting Rulemaking, and the purpose of that
3 OIR will be to consider adopting the regulatory
4 changes that are the subject of the discussions
5 that we're today.

6 The Siting Committee, I will anticipate
7 preside over the OIR, and will move as quickly as
8 possible to proceed with the changes that are the
9 subject of these discussions.

10 For purposes of today, you do have a
11 matrix in front of you, and the matrix
12 distinguishes between proposed changes in the
13 Warren Alquist Act, and proposed changes to our
14 siting regulations. It would be our intent to go
15 through Warren Alquist Act changes before lunch,
16 and siting regulations after lunch. But we will
17 play that by ear.

18 First, let me ask if anyone in the
19 audience desires to have, having reviewed the
20 matrix and the issues proposed to be discussed,
21 does anybody desire to add a specific issue to
22 either the section of the Warren Alquist changes
23 or the siting regs? If so, please come to the
24 microphone, state your name, and concisely
25 indicate the topic you wish discussed.

1 Sir.

2 MR. WILLIAMS: Yes. I'm Robert
3 Williams.

4 For the record, I think the manner in
5 which Cal-ISO does pricing, the California
6 Independent System Operator, has I think triggered
7 a gold rush, a rush to the Klondike.

8 PRESIDING MEMBER LAURIE: Sir, I --

9 MR. WILLIAMS: Excuse me, I won't make a
10 speech. The Cal-ISO pricing is the issue.

11 PRESIDING MEMBER LAURIE: Okay. Thank
12 you.

13 And we may determine that individual
14 topics may not be relevant to the siting process,
15 but we'll -- we'll discuss that.

16 MR. GARBETT: I'm William Garbett,
17 speaking on behalf of the public, an environmental
18 group.

19 The items that I wish to bring up are,
20 for instance, certain items that you consider
21 confidential that you do not release information
22 on that's part of the regulations now, concerning
23 Native American sites and competitive agreements,
24 and the status of intervenors and their
25 inaccessibility to this information and their

1 rights under the Code of Civil Procedure, under
2 the Private Attorney General rule that should be
3 looked into.

4 PRESIDING MEMBER LAURIE: Okay. Can you
5 give me your name again, sir?

6 MR. GARBETT: William Garbett, G-a-r-b-
7 e-t-t.

8 And also, that you probably should also,
9 because of the nature of the applications, at some
10 point in time, perhaps three years after an AFC is
11 approved, have a, what I call a thermal proof of
12 performance testing made to make sure that you
13 have some validity on your applications and the
14 applicants have been truthful as to the
15 efficiencies of the power plants.

16 Thank you.

17 PRESIDING MEMBER LAURIE: Thank you,
18 sir.

19 MR. WILLIAMS: Forgive me, I was trying
20 so hard to be brief I've forgotten my second
21 point.

22 It has to do with the proprietary nature
23 of power plant prices. I allege that everybody in
24 the power industry knows prices, so the only
25 people kept in the dark are the public, if you

1 keep it that way.

2 PRESIDING MEMBER LAURIE: Anybody else
3 wish to add something to the agenda?

4 Okay, thank you.

5 That doesn't foreclose us, if by the end
6 of the day we want to talk about a new issue we're
7 certainly free to do so.

8 We intend to address the issue in the
9 order that they are listed on the matrix. Does
10 anybody have any objection to that, and if so,
11 what's your rationale?

12 You have objection to this? Okay.
13 What's your objection, Mr. Williams?

14 MR. WILLIAMS: Sir, the only intent in
15 speaking briefly is to be constructive. The thing
16 that's lacking in the matrix is a regulatory
17 framework. If somebody would give an overview of
18 the vision of how the CEC intends to improve the
19 regulatory process, then these comments on
20 individual items would make more sense.

21 I have such a proposal here in three
22 pages that I'd like to distribute to you at the
23 appropriate time.

24 PRESIDING MEMBER LAURIE: Let me ask at
25 this point, is there anybody here that is

1 constrained by time? That is, I anticipate no
2 difficulty in getting through the agenda during
3 the day, but I have to know if somebody has a
4 plane to catch at 11:00 o'clock.

5 Sir, can you tell us what your time
6 constraints are, please, and topics?

7 MR. FREDERICK: Yes. I have a 3:00
8 o'clock flight out of San Francisco.

9 PRESIDING MEMBER LAURIE: Okay. Make
10 sure that we address your comments in a timely
11 manner. If it gets to be some time after 1:30 and
12 you have to get out of here, please communicate
13 with Ms. Mendonca and she will notify us, and
14 we'll get you to the microphone.

15 MR. FREDERICK: Thank you, Commissioner.

16 PRESIDING MEMBER LAURIE: Okay. Let me
17 then welcome you. The purpose of today's meeting
18 is to provide full public input. This is a public
19 process, and I assume you've been given --
20 everybody have the handout? Okay.

21 The intent is to go through the items in
22 order. If somebody wants to offer general
23 comments you may do so.

24 Mr. Williams, did you choose to offer
25 your comments at this time?

1 MR. WILLIAMS: Thank you, sir.

2 Let me give each of you a copy.

3 PRESIDING MEMBER LAURIE: Thank you.

4 MR. WILLIAMS: Basically, my --

5 PRESIDING MEMBER LAURIE: Wait a minute.

6 Wait.

7 (Inaudible asides.)

8 MR. WILLIAMS: Briefly, I've been active
9 in the nuclear industry and nuclear regulations
10 since 1964. These proposals are based on some
11 regulatory reforms that were planned in the U.S.
12 NRC in the 1970's.

13 At that time, the NRC faced an onslaught
14 of 100 plants. So basically, as I tick through
15 these bullets, I propose a new role for the CEC, a
16 role more like that of the FAA and the FDA, or the
17 NRC.

18 Second, anticipating the situation of
19 multiple plant regulation, you should consider the
20 two things that the NRC did, the pre-approved
21 sites, and they had standard plants.

22 The third element of the proposal is to
23 have two tracks, a three-year track for the non-
24 standard plants at non-approved sites, and a fast
25 track for the standard plants at bank sites.

1 The -- there should be a difference
2 between standard plants and developmental plants.
3 Now, on the second page at the top. Basically, a
4 standard plant is one that's been built and
5 operated for a year. And a developmental plant is
6 anything else.

7 I have a proposal on alternate plant
8 sites. Depending on whether the plant is in an
9 attainment or a non-attainment area, it should
10 meet different criteria, technical criteria. If
11 it's in a non-attainment area, one of the options
12 should be a near zero release plant.

13 In the middle of the page, there should
14 be multiple unit sites. In the early days of the
15 nuclear industry these were called power parks.
16 These are areas that were going to be pre-approved
17 for major plant development.

18 There needs to be integration of the CEC
19 roles and responsibilities into this new
20 framework. Basically, instead of answering in a
21 vacuum the questions about when can the CEC make
22 unilateral changes to the schedule, you would move
23 applicants back and forth between the slow track
24 and the fast track, depending on whether they met
25 these attributes.

1 Naturally, there would be some pre-AFC
2 studies the issues of electric transmission and
3 gas transmission. Root stability would be dealt
4 with during this -- the banking process. People
5 want to try to jam it into one year, won't work.
6 Make them take three years.

7 Over on the top of page three, the Cal-
8 ISO practices need to be integrated with the
9 regulatory structure. I think this requires a
10 special report which I would urge that you
11 initiate right now.

12 I've only been active in this area since
13 August 30th, although I draw on a background of 30
14 years experience in the power plant business. But
15 I smell a rat here. After 20 years of essentially
16 no plant applications, something has triggered a
17 gold rush, and I think it is the Cal-ISO pricing
18 scheme.

19 I already injected my point about
20 proprietary prices. I personally have worked for
21 General Electric, but I know that it's true in
22 every other vendor and every other business that
23 there are groups of people who monitor the costs
24 of their competition. To do otherwise is to not
25 run your business correctly.

1 So this idea of keeping prices
2 proprietary -- excuse me, not a speech on the
3 issue.

4 The Public Advocate's Office has been
5 particularly helpful, but it's ridiculous to staff
6 it with two people when there are 25 applications.
7 I think the Public Advocate's Office is a
8 reasonable compromise between funding for
9 intervenors and no funding or no support at all
10 for intervenors.

11 And I go through a rambling thought
12 process here on the fourth page. I think there
13 could be some technical help. I think providing
14 legal help without technical help is ridiculous.
15 You have lawyers talking to lawyers with no
16 substance.

17 So I think the rules on ex parte
18 discussions are bent probably beyond the limit.
19 It happens at the national level. It clearly
20 happens on zoning at the City of San Jose. What
21 to do about that, I propose a monthly technical
22 status meeting where the CEC staff stands up and
23 talks technical, not promises, of schedule. This
24 way the intervenors and the applicant don't have
25 to bother the staff in between the technical

1 status reports.

2 I think a framework like this is an
3 appropriate way to approach this questionnaire. I
4 think marching through 20 questions without some
5 vision of where you're going is not helpful.

6 I would like to compliment the staff for
7 the effort they went to in providing a completed
8 matrix. But again, I reiterate, a vision of
9 direction is needed before these questions are
10 answered.

11 Thank you.

12 PRESIDING MEMBER LAURIE: Thank you,
13 sir, very much.

14 Mr. O'Brien, will you add ex parte rules
15 to our siting regulation discussion, please.

16 Thank you, Mr. Williams.

17 Does anybody else desire to make general
18 comments before we get into -- sir, or Manuel --
19 who is that? Ms. Edson. Okay, thank you.

20 Good morning.

21 MS. EDSON: Good morning, Commissioner
22 Laurie, Commissioner Rohy. I'm Karen Edson,
23 representing the Independent Energy Producers
24 Association.

25 For those in the audience that don't

1 know, IEP is a trade association representing most
2 of the non-utility power industry, including many
3 of the applicants with cases before the
4 Commission.

5 I did want to offer a few general
6 comments about the proposal before you, because
7 you'll -- you'll see that it guides our comments
8 on the specific issues that will come up later on.

9 IEP I think, like the Commission,
10 strongly supports changes that would expedite this
11 siting process consistent with complete and public
12 environmental review. And we view --we view that
13 as the objective that we're all seeking here.
14 When we apply that objective to the package of
15 recommendations, we end up arriving at
16 recommendations for several changes to it.

17 One is we would eliminate those
18 recommendations that are really outside the scope
19 of that objective. We were surprised to see the
20 number of recommendations that would greatly
21 expand the Commission's jurisdiction to non-
22 thermal power plants, very small power plants, a
23 new way of calculating the generation of
24 repowering projects. All of that in an
25 environment where the Commission is very much

1 burdened by the workload before it.

2 So we would suggest that those changes
3 are really outside the scope of -- should be
4 outside the scope of this discussion for improving
5 the process we have before us.

6 Second, we would also eliminate a number
7 of what -- what I would characterize as clean-up
8 recommendations to the Warren Alquist Act, simply
9 because, from our point of view, they aren't
10 addressing a real problem that we think is being
11 encountered now, and as a result, don't rise to
12 the level of requiring any kind of immediate
13 attention.

14 Instead, we -- we have three
15 recommendations for trying to achieve that
16 objective. And many of them I think are
17 consistent with the objectives and the
18 recommendations that have been made in the
19 document before us today.

20 First, we think it's very important to
21 create opportunities to resolve issues informally
22 between the staff and applicant, between other
23 parties and the -- and the applicant and staff, et
24 cetera. The -- the application of the ex parte
25 rule to communications between the staff and the

1 applicant we think is highly inappropriate and
2 unprecedented, in our experience in regulation.

3 Second, we think it's very important to
4 clarify the process for considering local
5 override. We think that there are some -- the
6 staff has put forward some interesting ideas. We
7 would like to see ways of getting early
8 identification of those issues, creating finite
9 opportunities for local agencies to change their
10 ordinances or regulations, and a finite process
11 for the CEC override. Included in that I think
12 needs to be very careful work on identifying
13 Commission environmental documents that local
14 agencies may be able to rely upon for purposes of
15 their decision making.

16 We think that is going -- is probably a
17 very long discussion that will take a lot of
18 interaction among all parties, but IEP is prepared
19 to work on that with everyone.

20 And lastly, we think that an objective
21 here should be to simplify the documentation and
22 clarify the timing of other agency input.

23 So those -- those are the kind of three
24 recommendations that will be guiding our comments
25 on the specific package material you have before

1 you. And with that, you know, we look forward to
2 working with the Commission and the staff. We
3 think this is an excellent starting point for this
4 process.

5 Thank you.

6 PRESIDING MEMBER LAURIE: Thank you, Ms.
7 Edson, very much. I look forward to your comments
8 during the rest of the day.

9 Yes, ma'am, did you have some general
10 comments?

11 MS. HARVEY: Yes.

12 PRESIDING MEMBER LAURIE: Please -- and
13 identify yourself, please.

14 MS. HARVEY: I'm Eva Harvey, with
15 Californians for Renewable Energy, Incorporated.
16 And I have a petition to the Commission, but I
17 will just briefly summarize.

18 PRESIDING MEMBER LAURIE: Okay. Let me
19 ask again. We want to make sure this does not
20 apply to any particular siting case.

21 MS. HARVEY: No, it does not.

22 PRESIDING MEMBER LAURIE: Okay. Thank
23 you.

24 MS. HARVEY: The issues raised in this
25 petition are of statewide significance, having

1 effect on all of the licensing cases before the
2 California Energy Resources, Conservation and
3 Development Commission.

4 And to summarize it, the Commission's
5 current exemption of large power plants from both
6 the notice of intent and the California
7 Environmental Quality Act alternative site
8 evaluation requirements has no legal basis. The
9 explosion of non-utility applicants in the wake of
10 the energy industry's deregulation compels
11 continuing, not reducing, the thorough
12 environmental evaluation that has characterized
13 the Commission's history.

14 There is nothing in existing law
15 authorizing dilution of the public's participation
16 in the environmental review of large power plants,
17 and the desire to expedite private power
18 development by transferring the traditional
19 alternative sites evaluation process from
20 government to applicant directly violates the
21 California Environmental Quality Act.

22 The exemption practice exposes all
23 Californians to the possibility of major
24 industrial facilities being located at their
25 doorsteps without adequate environmental review.

1 All 16 of the current or expected projects have
2 the same legal deficiency as Sutter. More may be
3 racing towards certification before legislative
4 action occurs, and then it is not clear that such
5 statutory repair would be legally sufficient.

6 In all cases, other dissatisfied
7 citizens may raise the same request for judicial
8 review. The court's determination that the
9 Commission must either produce a traditional
10 environmental impact report or process such
11 projects through its notice of intent, that is,
12 protect the public's legal right to meaningfully
13 participate, is needed to ensure safe and
14 environmentally sensitive energy development in
15 California.

16 Thank you.

17 PRESIDING MEMBER LAURIE: Thank you,
18 ma'am. Your comments are appreciated.

19 Are you going to give -- are you going
20 to provide copies --

21 MS. HARVEY: Yes, copies.

22 PRESIDING MEMBER LAURIE: -- of that?

23 Okay.

24 Sir.

25 MR. HYDE: Good morning. My name is

1 Richard Hyde, and I'm with Duke Energy. And
2 because we have an AFC pending at -- for our Moss
3 Landing facility, I will keep my comments general
4 and not comment on the specifics.

5 We are in the process of developing
6 detailed comments on the specific proposals that
7 we will be providing by the end of the week. But
8 I did want to say that we appreciate the
9 opportunity to work with the staff and work with
10 the Commission on this issue. We think that, as a
11 developer, this is a very important issue in the
12 State of California for good public policy, and
13 that we look forward to great certainty in the
14 siting process without degradating the
15 environmental quality or the public participation.

16 So, as a developer, we're always looking
17 for certainty and we're always looking for
18 developing a level playing field for everyone. So
19 we look forward to working with you. As I said, I
20 just wanted to keep my comments very general this
21 morning.

22 PRESIDING MEMBER LAURIE: Thank you,
23 sir.

24 Yes, ma'am.

25 MS. WOOD: Good morning. My name's Joan

1 Wood, and my main interest was the Sutter Power
2 Project. And since that has already received all
3 of its clearances, apparently I'm quite free to
4 talk.

5 PRESIDING MEMBER LAURIE: We would ask
6 that -- that your comments pertain not to Sutter.
7 And if you want to talk about Sutter as an
8 example, you're free to do that. But the purpose
9 of this committee meeting is not to talk about the
10 Sutter Power Project, but rather to talk about our
11 rules and our regulations, and the process.

12 And so I would ask that your comments go
13 to the subject of our discussions.

14 MS. WOOD: Thank you.

15 Yes, the Sutter project -- the Sutter
16 Power Project is all but over, but I would submit
17 that a number of mistakes were made with it, which
18 I think have led almost directly to this meeting
19 today. It's been acknowledged even by members of
20 your committee, forgive me, that mistakes were
21 made.

22 And in reviewing the whole situation,
23 which started in early '97, the opposition, I
24 guess you would call it, to the speeding up of the
25 process and the location of this plant in

1 agricultural land in Sutter County, which thereby
2 has changed the entire future of the county. I
3 see in your diagram that there is a plan to
4 perhaps slow down the process, but I also see that
5 the notice of intent is -- looms large there. And
6 in my view, waiving the notice of intent, which is
7 what happened on the Sutter Power Project, allowed
8 that there would be no CEQA and no EIR, and
9 therefore no really thorough review of the
10 alternative siting procedure.

11 For example, for the Sutter Power
12 Project, 165 mitigations were agreed to. None of
13 those mitigations were offered up against the
14 alternative sites, which in my view, and the view
15 of many others, would have overcome the objections
16 to putting this plant where we think it belonged,
17 in the industrial part of the county.

18 The people who attended the hearings and
19 the workshops in Sutter County were under the
20 impression that their voices would be heard. They
21 were too naive to have a lawyer, too naive to
22 question some of the more important aspects of the
23 project.

24 Just one example. The company, which is
25 a very smart company, and ambitious, asked for and

1 received permission from our local agency to
2 measure the dispersion aspects of the pollution
3 from a site that is about 22 miles away from the
4 project. There was perfectly --

5 PRESIDING MEMBER LAURIE: Ms. Wood, let
6 me --

7 MS. WOOD: That's specific -- too
8 specific for you?

9 PRESIDING MEMBER LAURIE: -- let me --
10 yes. Understand that this committee has no
11 jurisdiction to revisit the Sutter case. There's
12 nothing that we can or will do about it. If you
13 have concerns or comments about, again, the
14 process that you think that was followed in error,
15 that you would like to see changed to make a
16 better process, then I would like you to comment
17 on that.

18 MS. WOOD: One is the length of time for
19 reviewing all the aspects of siting. Because by
20 taking longer, I -- it appears that the people who
21 were concerned would have been able to pull
22 themselves together, so to speak, and question
23 some of these things.

24 I have another specific thing, and that
25 is it seems sheer foolishness to let the applicant

1 submit all the figures, and as far as I can see,
2 nothing was every checked. It's not entirely a
3 blame on the -- the Energy Commission at all. I
4 mean, I have more -- much more criticism of the
5 local agencies, and some criticism of EPA Region
6 9. The use of emission credits is going on with
7 other projects in the state, and I think that in
8 an overview, I think the State Energy Commission
9 should take a look at that. I understand they're
10 being phased out.

11 Their new clean air regulations up the
12 pipeline, or down the pipeline, however that's
13 talked about, they've been hanging there since
14 1997. It'll be even harder to ram through these
15 projects after they finally -- these new
16 regulations finally fall into place.

17 The main thing I want to say is that the
18 people who will be affected in Sutter County,
19 where the first project under deregulation is
20 slated to go into operation, I think you should
21 concern yourselves with the effects on the people.

22 PRESIDING MEMBER LAURIE: General
23 comments?

24 MR. FREDERICK: Yes. Commissioners,
25 Jess Frederick, WCI.

1 I have four key comments I think need to
2 be addressed in a general fashion.

3 First, I'd like to compliment the staff.
4 I think they've done a very good job, given the
5 large number of projects that are coming through,
6 For whatever reasons people wish to explain that.

7 Also, I think the process is evolving in
8 a very positive direction. And I'd like to see it
9 continue in this manner. I figure it'll take 40
10 projects for us to finally get a standard
11 application.

12 Areas that I see so far today that are
13 deficient, that need to be addressed in a more
14 general manner are matters related to CPUC
15 oversight of things such as 131D transmission
16 related siting issues, that's done under a CEQA
17 process, and if they're out of phase with the
18 project you could find yourself behind on a
19 schedule basis. And it's a lot like getting an
20 air permit or a COC -- or a DOC, related to the
21 COC. You need to get that 131D interfaced with
22 the process. If somebody's going to use a
23 generator's special facilities agreement, the
24 sooner you do that, the better.

25 Another issue I think that many people

1 have spoken to at this point in a roundabout way,
2 is the environmental justice issue. I think from
3 a licensing standpoint, it needs to be given more
4 focus. It's driven very heavily by federal PSD
5 processes, and I think it just needs to be given
6 more focus in the licensing process so that you
7 don't get that PSD yet, because these are major
8 projects. They will get a PSD review, and you can
9 find yourself crosswise on environmental justice
10 after the licensing process has gone through. So
11 I think it just needs more focus.

12 Also, I think site control has to be
13 given a primary consideration in the licensing
14 process. The reason I say that is because it can
15 put you in conflict with basic rights of
16 landowners if the landowner doesn't even have some
17 kind of an approval or authorization for a project
18 proponent to move forward with the siting of a
19 project on property that hasn't been controlled by
20 the developer.

21 And so I think you need to look towards
22 letters of intent, a signature on the application,
23 something that shows that the landowner themselves
24 -- excuse me -- has some approval of the process,
25 or knowledge of the process.

1 And then lastly, I think, is a general
2 rule. We need to develop clear definitions of
3 what types of impacts we're talking about, and how
4 the mitigations affect those impacts. This is a
5 problem with CEQA alone. It's very difficult to
6 get good control of the impact related issues if
7 you don't have good definitions.

8 And I think those are my general
9 comments. Thank you.

10 PRESIDING MEMBER LAURIE: Thank you,
11 sir.

12 Mr. Alvarez?

13 MR. BURK: Good morning.

14 PRESIDING MEMBER LAURIE: Good morning.

15 MR. BURK: My name is Jerome Burk, a
16 Sutter County resident.

17 General comments today are set forth as
18 follows. Three goals set forth in paragraph one
19 of your notice for this hearing, and I quote, are
20 "to ensure that these facilities can be sited in a
21 timely manner, while protecting environmental
22 quality and public participation in the siting
23 process," unquote.

24 I would submit to you that under current
25 law, the first of these goals is incompatible with

1 the other two. The current requirement of a 12
2 month timeframe used in the Commission's AFC
3 process forces compromises between the complete
4 gathering and analysis of information, and the
5 need to produce a siting decision in time to meet
6 the legal timeframe requirement. Excuse me.

7 This situation is aggravated by the
8 unprecedented volume of applications to the
9 Commission as a result of the deregulation of the
10 California energy market. While a thorough
11 analysis of environmental impacts associated with
12 any of these projects suffers from the need of a
13 rush to judgment, so, too, does effective public
14 participation.

15 Unfortunately, the general public is not
16 known for paying much attention to the everyday
17 workings of its government. Most of us are too
18 busy with our own lives and responsibilities to
19 keep up with the daily activities of this
20 Commission and the thousands of other government
21 bodies whose decisions affect our lives.

22 When the public does take notice enough
23 to become involved, it faces the daunting
24 challenge of the learning curve necessary to make
25 an intelligent and informed contribution to the

1 process. A narrow timeframe for the process only
2 exacerbates this problem. Dismissing this as
3 simply the public's own fault for not paying
4 attention is not enough.

5 It is only when the public, on those
6 occasions it chooses to, can effectively -- and I
7 emphasize effectively -- participate, that trust
8 in its government is enhanced. Without that
9 trust, our society faces a bleak future, indeed.

10 The point here I'm trying to make is
11 that we need a longer timeframe for the permitting
12 process than the current 12 months required under
13 the Warren Alquist Act.

14 Thank you.

15 PRESIDING MEMBER LAURIE: Thank you,
16 sir.

17 MR. ALVAREZ: Good morning,
18 Commissioners. Manuel Alvarez, Southern
19 California Edison.

20 Just let me offer a couple of general
21 comments.

22 COMMISSIONER ROHY: Excuse me, Manuel.
23 Would you try to -- we're having trouble hearing
24 all of the people who are speaking. I'm sure the
25 audience is having trouble, also.

1 MR. ALVAREZ: Actually, I think the
2 audience does have trouble.

3 COMMISSIONER ROHY: So if you can speak
4 as closely to this microphone as possible, I can
5 hear the difference even when I just about eat it.

6 MR. ALVAREZ: Okay.

7 COMMISSIONER ROHY: Put it very close to
8 your mouth.

9 MR. ALVAREZ: Very close. How's this?

10 Manuel Alvarez, Southern California
11 Edison Company.

12 Let me offer a couple of general
13 comments that I think are critical here.

14 This particular item, I think you're
15 well aware, kind of interfaces directly with the
16 restructuring of the electric utility industry.
17 And so the committee needs to be commended for
18 addressing that issue.

19 But what I found when I was looking at
20 the material, in reading it, was basically I found
21 a mixing between what was the process, what is the
22 current process, and what the future process
23 should be. And I found myself actually going back
24 and forth, actually trying to sort out what the
25 Commission thought the future looked like. And

1 that was unclear to me.

2 And the biggest area where I find that
3 difficult to understand was basically in the
4 expansion of the Commission's jurisdiction either
5 at the local government level, the right of
6 eminent domain, or in the transmission areas.
7 Those are, to me, questions of what the Commission
8 wants in the future.

9 A lot of issues develop, for example, on
10 the relationship between the Commission and the
11 ISO. To me, those are issues of what is, and
12 things that are evolving in that current
13 situation. They did not exist in the past, or
14 what was, but they exist currently and are being
15 developed. And I believe the Commission has to
16 separate those kinds of questions to go what can
17 be evolved, and what can be developed, versus what
18 the Commission would like to see in the future.

19 And it's unclear in the overall context
20 of the siting process what the Commission and the
21 committee actually see as the vision for the
22 future.

23 And with that, we can talk about the
24 specifics when we get there.

25 Thank you.

1 PRESIDING MEMBER LAURIE: Thank you, Mr.
2 Alvarez.

3 Next I want to call on Mr. Cohn, but
4 before I do that, we're going to take a seven
5 minute break so that we can work on our sound
6 system. We will reconvene at 10:30.

7 (Thereupon, a recess was taken.)

8 PRESIDING MEMBER LAURIE: Ladies and
9 gentlemen, if you can take your seats, please.

10 (Inaudible asides.)

11 PRESIDING MEMBER LAURIE: Ladies and
12 gentlemen, if you could take your seats, please,
13 so we can reconvene.

14 We're still on general comments. Mr.
15 Cohn.

16 Anybody else desire to make general
17 comments before we move into the particular items?

18 Mr. Cohn. Good morning, sir.

19 MR. COHN: Good morning. Steve Cohn,
20 representing the Sacramento Municipal District.
21 Always a pleasure to come back to the Energy
22 Commission.

23 And I want to commend the Commission and
24 staff for your willingness to take a very
25 comprehensive look, not just as directed by

1 statute, but also just looking for ways to improve
2 the efficiency of the process, as well.

3 We are still reviewing the proposals, so
4 I cannot at this time say what SMUD's position
5 will be on some of the various proposals. I would
6 predict some level of concern about some of the
7 proposals to enlarge the Commission's
8 jurisdiction. But we're going to be taking a look
9 at that, and be commenting in the future.

10 One of the areas that I think you may
11 want to add to your list to consider, both from a
12 statutory as well as a regulatory perspective,
13 would be your jurisdiction with respect to natural
14 gas pipelines. Having been through the one case
15 where there was a major pipeline attached to --
16 actually, in that case, several projects, I'm
17 referring to SMUD's gas pipeline, there was some
18 difficulty trying to figure out how to process
19 that at the time.

20 We had a SEPCO proposal at that time, as
21 well as Procter and Gamble cogen plants, and the
22 statute and the regulations weren't real clear.
23 And it -- it did create some level of
24 vulnerability for the Energy Commission and for
25 SMUD, in terms of someone attacking the process.

1 So that's an area I would think you might want to
2 take a look at.

3 There was one other case, many years
4 ago, I believe involving the Basic American, or
5 perhaps Bob remembers. There was a gas pipeline
6 over in Monterey County, I believe, where there
7 was some uncertainty, as well. So you might want
8 to take a look at that.

9 And we'll be eager to work with you over
10 the next few months on both the statutes and the
11 regulations. Thank you.

12 PRESIDING MEMBER LAURIE: Thank you,
13 Steve, very much.

14 MR. COHN: Any questions, or --

15 PRESIDING MEMBER LAURIE: Not at this
16 time.

17 MR. COHN: All right. Thanks.

18 PRESIDING MEMBER LAURIE: Thank you.

19 Okay. We're going to move into the
20 individual items, beginning with elimination of
21 the Notice of Intention provision.

22 As you go through each item, I'll call
23 upon staff to provide a background for discussion.
24 Mr. O'Brien.

25 MR. O'BRIEN: Thank you, Commissioner.

1 As you indicated, the first item under
2 changes to the Warren Alquist Act is eliminating
3 the Notice of Intention.

4 Very quickly, staff recommends that
5 because, first of all, we aren't seeing NOIs filed
6 anymore. Secondly, for those projects that are
7 still -- would require an NOI, the staff believes
8 it would be -- would make more sense, from a
9 regulatory point of view, to have those projects
10 file an AFC. It might be a longer AFC than for
11 the current projects that can file for a 12 month
12 AFC.

13 Back when the NOI was used by investor
14 owned utilities they had the power of eminent
15 domain, and they could condemn sites. That's not
16 the case, the type of applicants we're seeing
17 today. And the staff doesn't believe it makes
18 sense for applicants to have to propose multiple
19 sites. In addition, I think the NOI was viewed as
20 a process in which power plants could be actually
21 brought online more -- more quickly, and you could
22 determine fatal flaws and eliminate those sites in
23 which there were fatal flaws.

24 So for a variety of reasons that we lay
25 out in the matrices there, we recommend

1 elimination of the NOI.

2 PRESIDING MEMBER LAURIE: Can you review
3 the status of the NOI legislation, please? The
4 NOI statute, and any changes to that statute.

5 MR. O'BRIEN: In SB 110, originally it
6 proposed elimination of the NOI, but that was
7 changed so that the NOI is still in effect.

8 MR. THERKELSEN: Commissioner, this is
9 Bob Therkelsen. I don't recall any changes that
10 have been proposed in the NOI legislation,
11 probably for the last 10 or 15 years. I think
12 it's been fairly static over that period of time.

13 PRESIDING MEMBER LAURIE: Oh, 110 did
14 originally address it; is that correct?

15 MR. THERKELSEN: Correct.

16 PRESIDING MEMBER LAURIE: Thank you.

17 Ladies and gentlemen, the subject is the
18 elimination of the Notice of Intention provisions
19 of our application process. We'd like to open up
20 public discussion on that item, if anybody has
21 thoughts and comment.

22 Yes, ma'am. I would again ask you to
23 state your name for the record, please.

24 MS. HARVEY: I'm Eva Harvey, on behalf
25 of Californians for Renewable Energy. And we --

1 our answer to that particular question is no.

2 The NOI should not be eliminated without
3 California Environmental Quality Act equivalent
4 rule for public scoping and specific alternatives,
5 with specific sizing criteria and analysis
6 requirements in PRC.

7 Thank you.

8 PRESIDING MEMBER LAURIE: Thank you,
9 ma'am.

10 Sir.

11 MR. WILLIAMS: Yes. I'm Robert
12 Williams, and I need a note of clarification based
13 on the staff response.

14 It's my impression that the Warren
15 Alquist Act, or some relatively recent change,
16 permitted the Notice of Intent procedure to be
17 very, very short. And I thought that was the --
18 like in the order of three months. And I'm
19 familiar with a couple of cases where I think it
20 was about that short.

21 Could you please clarify my
22 understanding of that matter?

23 PRESIDING MEMBER LAURIE: Yes, Mr.
24 Williams. Thank you.

25 Mr. Therkelsen or Mr. O'Brien, I'd ask

1 you to review the process, perhaps not as
2 determined by a statute, but as determined by
3 Commission policy. That may be what Mr. Williams
4 is referring to.

5 MR. THERKELSEN: The Notice of Intent
6 was originally established back in 1975 as an 18
7 month process where an applicant had to submit
8 three alternative sites. The Commission reviewed
9 those sites and determined the suitability.

10 The legislature also established a
11 number of exemptions over the years to the NOI,
12 and those were for geothermal projects, solar
13 projects, projects that had one site only that was
14 available for them, cogeneration, for example, and
15 also demonstration.

16 Back in 19 -- I believe it was the early
17 -- early 1990's, the legislature also introduced a
18 requirement exempting from the NOI any projects
19 that were found participated in a competitive
20 solicitation. And with that exemption, the
21 Commission reviewed -- this was under ER 96, so
22 this was probably about three years ago, the
23 Commission established a regulation, or a -- a
24 proceeding in which it determined that projects
25 that participated in a competitive market and were

1 natural gas fired no longer had to file an NOI, if
2 they met certain requirements.

3 Each project, then, that was proposed as
4 a merchant facility that was natural gas fired and
5 participated in the California market, was exempt
6 from the NOI. The Commission committee, actually
7 the Siting Committee, did review a number of those
8 projects, had a short process in which the facts
9 associated with the case were reviewed by staff
10 and were also subject to -- and in a couple of
11 occasions a committee hearing, and then an
12 exemption was made from the NOI process.

13 I think that's what Mr. Williams is
14 referring to as -- as the process that he's aware
15 of. It was not a review of the entire merits of
16 the case, the environmental impacts, the
17 alternatives, et cetera. It was simply a review
18 to make sure that they met the criteria allowing
19 that project to be exempt from the -- from the
20 NOI, based upon the legislation.

21 PRESIDING MEMBER LAURIE: When was the
22 last non-exempt application that was processed,
23 where we actually did an NOI?

24 MR. O'BRIEN: San Diego Gas and Electric
25 filed a -- an NOI in either 1990 or '91 which was

1 then subsequently withdrawn. It was for five
2 power plant sites, located in San Diego and
3 Riverside Counties.

4 PRESIDING MEMBER LAURIE: Thank you.

5 Ms. Edson.

6 MS. EDSON: Last year, when SB 110 was
7 introduced, it did propose to eliminate the NOI.
8 And as I understand the legislative history, one
9 reason that the legislature opted to go with the
10 exemption to the NOI process, rather than the
11 elimination of the NOI process, was that there are
12 a number of components of the NOI process largely
13 having to do with consultation with other
14 agencies, like the Coastal Commission, BCDC, et
15 cetera, that are not necessarily transferred
16 completely in the AFC. And as you -- as you go in
17 and to eliminate the NOI itself, it raises a
18 number of ancillary issues and complications that
19 are not necessarily simple to deal with.

20 So I -- this is one of the reasons why
21 our reaction to this was there's no -- there's no
22 reason to try to do this. I don't think anyone
23 going through the AFC process resists the
24 Commission's interpretation of statute which
25 applies much of that consultation to the AFC

1 process. And it's simply -- it's, you know,
2 theoretically, maybe this is not a bad idea, but
3 we think for practical reasons, it's -- it's a lot
4 of work, will take a lot of -- of legal attention
5 and scrutiny, and is not as simple and
6 straightforward as the recommendation would
7 suggest.

8 PRESIDING MEMBER LAURIE: Under what
9 circumstances, practically speaking, would you
10 envision an NOI that would not be exempt, that
11 might --

12 MS. EDSON: If you had a coal or nuclear
13 plant.

14 PRESIDING MEMBER LAURIE: -- walk in the
15 door -- I mean, I --

16 MS. EDSON: I said if you have a coal or
17 nuclear plant you would be subject to the NOI. Is
18 there something -- another technology that -- I
19 mean, it's -- so it's, you know, are coal and
20 nuclear plants being proposed in California? No,
21 I don't think they are.

22 So, like I said, it strikes me as kind
23 of a theoretical issue, and one that creates, you
24 know -- I mean, are there legitimate reasons to
25 want to -- this is kind of a clean-up, to clean up

1 the act. But we have a lot -- other more serious
2 compelling issues before us. So we -- we view
3 this as kind of a distraction.

4 PRESIDING MEMBER LAURIE: Okay. Thank
5 you.

6 Sir.

7 MR. FREDERICK: Jesse Frederick.

8 The matter of the NOI. I view the NOI,
9 just based on my own experience, as much of a
10 holdover of a previous paradigm that we used to
11 exist under, and it sort of is like an appendix
12 now for us. We just submit the document, and the
13 most important thing that happens as a result of
14 the NOI process is we go in and we meet with
15 staff. And they give us some advice as to when
16 they think we can get to work on the issues with
17 the staff to eventually arrive at the AFC.

18 The whole process is now driven by the
19 AFC, and there's just absolutely no need for an
20 NOI. And the sooner you get rid of it, the better
21 off you are, because I think the AFC process, in
22 and of itself, will take care of all the other
23 matters as it relates to BCCD, or any other
24 agencies. They get notified, and they have an
25 opportunity to come in through the licensing

1 process.

2 Why go through it twice? I think it's
3 just very complicated, and it's already a complex
4 system. I -- I would advocate that you get rid of
5 the NOI promptly.

6 PRESIDING MEMBER LAURIE: Thank you, Mr.
7 Frederick.

8 Mr. Williams.

9 MR. WILLIAMS: Thank you, sir.

10 At the risk of oversimplification, I
11 view the NOI process as the equivalent of the site
12 banking process. If somebody can do it in one
13 year, then have at it. But my experience on many
14 types of plants is it could take 18 months or two
15 years.

16 And so it's shocking to me to hear that
17 we haven't done an NOI since 1990. And I think
18 the only reason we're not in bigger trouble than
19 we are is that there haven't been many plants
20 built. We had a tremendous surplus of power for
21 the past 20 years, and we're only now beginning to
22 run into reserve margin concerns.

23 So I reiterate. The NOI process should
24 be viewed as a site banking process. Thank you.

25 PRESIDING MEMBER LAURIE: Thank you,

1 sir.

2 MR. O'BRIEN: Commissioner, can I ask
3 Mr. Williams a question?

4 Mr. Williams, just one question in terms
5 of your site banking process. Are you suggesting
6 that this banking process be undertaken by the
7 California Energy Commission to identify potential
8 sites for power plants?

9 MR. WILLIAMS: Thank you for the
10 question.

11 Briefly, the answer is no. It would be
12 analogous to San Diego Gas and Electric, in 1990,
13 trying to get preapproval for five sites. I would
14 see every qualified vendor having a duty to bank
15 sites for their future plants. By bank, I mean
16 get pre-environmental approval. There would be
17 some smaller fee associated with the California
18 Energy Commission's review of that work.

19 Thank you.

20 PRESIDING MEMBER LAURIE: Yes, ma'am.
21 Ms. Wood.

22 MS. WOOD: I'm still Joan Wood.

23 I wanted to point out that there's a
24 little known federal requirement to post your
25 alternative fuel source in case of a failure.

1 It's a 1975 regulation, or law, and I found out
2 about it because a reporter surfed the Internet
3 and found that on October the 3rd, that CalPine
4 had declared that coal was the alternative fuel
5 source in Sutter, and also the alternative fuel
6 source for three other of its power plants, not in
7 the State of California. One was Arizona, and I
8 don't remember the other two.

9 You said that the Notice of Intent was
10 -- was designed for natural gas fired plants. And
11 if you eliminate it, that's going to eliminate
12 more than just about natural gas fired plants. I
13 don't think there's been any discussion ever about
14 coal fired. But here they are, saying that if the
15 natural gas runs out, which it could, they're
16 going to use coal, with no design for where to get
17 it or anything like that. But coal is well known
18 to be an even bigger polluter than what we're
19 looking at with these other plants.

20 I'd like you to think about that before
21 you decide to get rid of the Notice of Intent.

22 Thank you.

23 PRESIDING MEMBER LAURIE: Thank you.

24 MR. GARBETT: Okay, William Garbett,
25 speaking on behalf of the public.

1 This item, it's -- the NOI is, in a way,
2 tied to you might say the holdover with CEQA, and
3 you're trying in your matrix of options here today
4 that you're considering, you also have a few other
5 questions regarding CEQA and the equivalencies of
6 it through other agencies.

7 If you eliminate the NOI, you eliminate
8 one of the elements of CEQA, where the Energy
9 Commission is claiming that you're an equivalent
10 to CEQA in another phase.

11 Because of that, the NOI basically
12 brings up alternatives. The question is, is are
13 these viable alternatives. The question is, is --
14 does the applicant at this point in time, or the
15 person filing the NOI, hold an option of real
16 estate, has there been a lis pendens filed on the
17 real estate title for the time that the NOI or an
18 application would be open? These are issues that
19 I think you have to look a little bit further
20 into.

21 The particular bit is are you doing
22 streamlining, like the Governor's Office of
23 Planning and Research does, for CEQA, where you
24 usurp local authority with a fast track process,
25 where the governor makes a decision, for what you

1 might call big boxes, or other such things that
2 they want to place in the local communities under
3 CEQA.

4 Is the CEC claiming that they have that
5 authority under the present law of, you might say,
6 taking control of CEQA on all the projects as part
7 of the application process.

8 I think those are some issues that need
9 to be looked at going further down your matrix,
10 that may come back to you later today. I'm not
11 going to comment further on them.

12 Thank you.

13 PRESIDING MEMBER LAURIE: Thank you, Mr.
14 Garbett.

15 Anybody else desire to offer comment on
16 NOI?

17 PUBLIC ADVISER MENDONCA: Mr. Chairman,
18 Roberta Mendonca --

19 PRESIDING MEMBER LAURIE: Ms. Mendonca.

20 PUBLIC ADVISER MENDONCA: -- the Public
21 Adviser.

22 As I stated earlier for the record, I
23 received 12 sets of written comments. I'm
24 actually just going to summarize on the first item
25 from five, because some of the people are here and

1 have already spoken.

2 But the feeling from five of the
3 intervenors was that the NOI should not be
4 eliminated, and although there isn't a spot for
5 extended remarks, I believe that the feelings that
6 came through in the five surveys would've echoed
7 the comment made by Michael Boyd. Eva made the
8 comments earlier.

9 And one that came in that was fine,
10 eliminate the Notice of Intention but provide us
11 with an 18 month application for certification. I
12 think the emphasis is on the alternatives.

13 Thank you.

14 PRESIDING MEMBER LAURIE: Thank you.

15 MR. BURK: I'll try to speak into this a
16 little closer this time.

17 I, too, am opposed to eliminating the
18 NOI.

19 PRESIDING MEMBER LAURIE: Can you say
20 your name again, sir?

21 MR. BURK: Oh, I'm sorry. Jerome Burk,
22 Sutter County.

23 But along with that, I would go one step
24 further, and if I had my druthers, so to speak, I
25 would like to see you reinstitute the NOI process

1 for all the plants, including the ones that you've
2 given exemptions to. However, I don't delude
3 myself into thinking that may happen, although it
4 would be nice.

5 So this proposal by the staff of going
6 with an 18 month AFC for the nuclear and coal and
7 other plants that now are required to have it, an
8 NOI might be the way to go with all your power
9 plants.

10 Again, my point in all of this is that
11 the process here is rushed. And whenever
12 something is rushed, it usually doesn't get done
13 right. And when we're talking about the impacts
14 on the lives of the people in California, as well
15 as the overall impact on the environment, I think
16 a little extra time, such as six months, to
17 thoroughly make sure that we've done this right,
18 would be appropriate.

19 So I would urge you to extend this
20 certification process to at least 18 months,
21 whether it be through an AFC or back to the NOI
22 process.

23 Thank you.

24 PRESIDING MEMBER LAURIE: Thank you,
25 sir.

1 I think I am supposed to announce that
2 this proceeding will be heard over the Net at
3 Energy.CA.gov/realaudio, but those on the Net
4 hearing this probably already know that.

5 (Laughter.)

6 PRESIDING MEMBER LAURIE: And those that
7 don't know it, it's probably too late.

8 We should try doing that sometime.

9 COMMISSIONER ROHY: Is it happening in
10 real time?

11 PRESIDING MEMBER LAURIE: Yeah,
12 probably.

13 Okay. Staff have any concluding remarks
14 on that issue?

15 We will go to Item Number 2, Elimination
16 of the Small Power Plant Exemption.

17 Mr. O'Brien.

18 MR. O'BRIEN: Staff is recommending
19 eliminating the SPPE, and as explained in the
20 matrix for changes to the Warren Alquist Act,
21 there are several reasons.

22 One, we think the 100 megawatt limit for
23 SPPEs is an arbitrary demarcation line. The
24 technology used by a power plant and its location
25 are more determinative of a project's

1 environmental impacts than its size. Therefore,
2 the 100 MW limit arbitrarily treats applicants
3 differently. They don't have a level playing
4 field.

5 We think there's value to the
6 Commission's one stop siting process, one
7 coordinated review of the project and permitting
8 is handled by one agency.

9 And finally, the SPPE review process is
10 not significantly shorter than the AFC.

11 PRESIDING MEMBER LAURIE: Thank you.
12 Public comment.

13 MS. HARVEY: Again, I'm Eva Harvey, from
14 Californians for Renewable Energy.

15 And we say no, because it could vary
16 with power plant type. An approximate zero
17 emission project should have different
18 requirements. The new lower size limit, 25
19 megawatt emission limit per kilowatt criteria may
20 differ for EPA attainment and non-attainment
21 areas. Lower size in response to present abuses.

22 Thank you.

23 PRESIDING MEMBER LAURIE: Thank you.

24 Sir. Mr. Grattan.

25 MR. GRATTAN: Good morning.

1 PRESIDING MEMBER LAURIE: Good morning.

2 MR. GRATTAN: I rise to the defense of
3 the SPPE process. Having -- yes, Dave.

4 COMMISSIONER ROHY: Your name is?

5 MR. GRATTAN: John Grattan.

6 Appreciate the opportunity to be here
7 before the Commission, and I commend the staff for
8 an open and thoughtful process. And I do have to
9 take exception to one recommendation, and that's
10 the elimination of the small power plant
11 exemption.

12 Staff has just told you that the grounds
13 for its recommendation are its belief that 100
14 megawatts is an arbitrary limit, the playing field
15 should be limited in the era of deregulation, and
16 that the SPPE process is not a one-stop shop.

17 And finally, the permitting timeframe --
18 and I'm a little confused -- is either
19 unrealistically short or paradoxically not
20 substantially different than that of an AFC.

21 Responding to those issues, I would
22 suggest that from an environmental perspective,
23 and I agree with the woman who just spoke, that
24 from an environmental perspective all projects are
25 not equal. That's why we have the negative

1 declaration process under the California
2 Environmental Quality Act. And the SPPE is in
3 effect to make a declaration.

4 To qualify for an SPPE, a plant must not
5 only be under 100 megawatts, but under law the
6 Commission must find that it'll create no
7 substantial adverse impact upon the environment or
8 energy resources. Given those criteria, 100
9 megawatts is as good a limit as any.

10 Abolishing the negative declaration
11 option for a smaller project does not level the
12 playing field. More likely, it'll drive the small
13 energy efficient cogeneration projects from the
14 playing field. These projects have higher thermal
15 efficiencies than the larger stand alone plant,
16 but do not generate the volume of revenues of
17 those larger relatively less efficient plants.

18 These plants permitted under the SPPE
19 process often bring creative solutions and unique
20 community benefits to the table, such as providing
21 process steam to local industries, as well as
22 needed local voltage support.

23 We need look no further than locally to
24 the Carson Ice Project. That's, I believe, about
25 a 90 megawatt project that provides power to SMUD.

1 That project was licensed as an SPPE fairly
2 recently. It utilizes -- gas from the sewage
3 treatment plant, and it provides process heat for
4 both the treatment plant and an icemaking plant.
5 Again, as well as providing 90 megawatts of
6 electricity to SMUD.

7 It uses the whole hog. A lot of these
8 projects do.

9 I think it would be unfortunate if we
10 were to guess as to what configurations the market
11 might favor, and using that supposition, eliminate
12 a valid existing regulatory streamlining. The
13 nullification would, in turn, discourage the
14 development of small cogeneration projects.

15 The cost of licensing these smaller
16 plants can be critical factors in feasibility
17 decisions. A smaller, less impacting plant should
18 have the same access to a negative declaration
19 process that any other small environmental
20 facility or small development under CEQA does.

21 A mom and pop store, with a limited
22 number of square feet, has much less impact than a
23 big box store, and generally is treated to a
24 negative declaration process. Whereas a full
25 environmental impact review would be required for

1 a larger store. Staff points out, and correctly,
2 that the SPPE process is not a one stop shop, as
3 is the AFC.

4 My belief is that the AFC -- excuse me,
5 the SPPE process may be the best of both worlds.
6 It applies the expertise and credibility to the
7 CEC in its lead agency role for environmental
8 review, but it also requires the applicant to
9 secure its local and regional permits. An
10 applicant that is bringing a project which has
11 community benefits and community support ought to
12 at least have the option of bringing its case
13 before the community.

14 The staff seems to feel constrained by
15 the 135 day permitting time limit. I believe
16 that's in the regulations for the SPPE. If that's
17 the case, then perhaps the thing to do is extend
18 that to a six month time limit. That might be
19 more realistic and more appropriate, and we would
20 support that. This could be done by regulatory
21 changes.

22 There also seems to be, again, an
23 unstated opinion that in the days of deregulation
24 the small project, and thus the SPPE, is a thing
25 of the past. And that only the sizeable stand

1 alone merchant plants will be proposed.

2 Well, I'm here to tell you that's not
3 the case. I've been asked to address the
4 Commission on behalf of a cogeneration developer
5 that wishes to pursue a small, tightly designed
6 project. You can understand why I'm not going to
7 say who that is. This isn't probably the proper
8 place to announce it, and I might get ex parte'd
9 right out of here.

10 But without access, this project,
11 without access to an SPPE process, the permitting
12 costs may overload the process.

13 The Commission's historic -- finally, in
14 summation. This Commission's historic commitment
15 to the efficiencies of cogeneration still has a
16 place in the area of deregulation. And we urge
17 the retention of the SPPE process.

18 COMMISSIONER ROHY: Question.

19 PRESIDING MEMBER LAURIE: Commissioner
20 Rohy.

21 COMMISSIONER ROHY: I just want to
22 comment on Mr. Grattan's use of the word "small".
23 You're referring to 50 to 100 megawatts in --

24 MR. GRATTAN: Correct.

25 COMMISSIONER ROHY: -- this particular

1 case. Small can be -- and that's not a mom and
2 pop operation, necessarily.

3 MR. GRATTAN: Well, it's a lot less than
4 800 to 1,000 megawatts. I understand. If, my
5 only point is, if it does not have a significant
6 environmental impact, it ought to have access to
7 the negative declaration process. Some may, and
8 shouldn't.

9 COMMISSIONER ROHY: Let me ask you a
10 question, then. I've been involved in some siting
11 cases, and again I won't mention names, where the
12 community has actually said there's -- we want
13 this project, we desperately want it, cut your 12
14 month process down to six months. Would you
15 include those, even though they're over 100
16 megawatts?

17 MR. GRATTAN: I think that there has to
18 be a limit. One has to set a limit. One could
19 question whether -- when I first started this
20 business, in this business about 17 years ago, a
21 power plant in the range of 50 to 100 megawatts
22 was -- was emitting about 72 parts per million
23 NOx. Now we're down to 2.0 NOx. Do the math.
24 You can build, at least from an air quality
25 perspective, there's a case to be made that the

1 100 megawatts should be raised.

2 I'm not advocating that now.

3 COMMISSIONER ROHY: Or -- or should we
4 do it on a basis of 100 tons of NOx, or some other
5 number?

6 MR. GRATTAN: Well, you can consider
7 that. I -- I'm -- I think probably the best thing
8 is to not go over to the legislature. You may
9 come back with less than you went over with.

10 COMMISSIONER ROHY: Thank you.

11 MR. THERKELSEN: John, excuse me. I've
12 got a question for you.

13 MR. GRATTAN: Yes.

14 MR. THERKELSEN: Actually, I have two
15 questions for you.

16 MR. GRATTAN: I thought I could escape
17 here, Bob.

18 MR. THERKELSEN: No, no, no.

19 I'm taking it from your comments that
20 you would still advocate keeping a two step
21 process where they come to the Commission and then
22 go to the local agencies for individual permits.
23 Or would you advocate condensing that all into one
24 stop?

25 MR. GRATTAN: I think that a two step

1 process is adequate. Is okay. Again, I -- I'm
2 leery of going over to the legislature with
3 changes.

4 MR. THERKELSEN: The second question I
5 had, you said this was the only thing you
6 disagreed with. Is that still correct?

7 (Laughter.)

8 MR. GRATTAN: That's the only -- that's
9 the only thing anyone wants me to disagree with,
10 pretty much --

11 (Laughter.)

12 MR. GRATTAN: -- pretty much in
13 agreement with the thrust of a lot of the
14 recommendations here.

15 MR. THERKELSEN: No further questions of
16 this witness.

17 PRESIDING MEMBER LAURIE: Thank you.

18 Mr. Frederick, did you have a comment?

19 MR. FREDERICK: Yes.

20 PRESIDING MEMBER LAURIE: And then Mr.
21 Williams.

22 MR. FREDERICK: I guess the only
23 question we have with regard to the SPPE has more
24 to do with integration as it relates to
25 distributed generation in general. It's very

1 simple for me not to -- I tend to agree with you,
2 Commissioner, regarding size and small mom and
3 pops. Fifty megawatts is a commercially viable
4 facility, multimillion dollars in cost.

5 However, I can easily envision a
6 situation where distributed generation breakpoints
7 aren't at the 20 megawatt level, but more at the
8 60 megawatt level, give the improved efficiencies
9 of modern engines. And I think that it behooves
10 the CEC not to just forego the exemption process,
11 but rather re-engineer everything from about 100
12 megawatts down to look more like a distributed
13 generation facilitative process, because I think
14 distributed generation has a very essential place
15 in the California generation mix, especially for
16 those communities, as you pointed out, where it's
17 highly desirable, given their location and
18 transmission.

19 And I think that one of the things that
20 could be considered is the CEC taking a more
21 responsible agency like review in the CEQA process
22 that may be driven locally, in those instances,
23 and actually issuing some kind of an authorization
24 under that framework where it does facilitate
25 distributed generation.

1 Thank you.

2 MR. WILLIAMS: I'm Robert Williams.

3 I direct your attention to page one of
4 the attachment to my letter, and item two. I did
5 endorse for the most part the -- the comments of
6 the Californians for Renewable Energy. I never
7 thought a nuclear advocate would be in bed with
8 the greens, but here I am.

9 We agree on this point, because we would
10 propose an amendment. I think the size of the
11 small power plant exemption should be reduced.
12 And the reason is that I've been dumbfounded by
13 the data, as I've tried to become a quick study.
14 Ten years ago, a 50 megawatt plant produced 200
15 tons of NOx. Today, a 600 megawatt plant produces
16 175 tons of NOx. Now, that doesn't mean the
17 bigger plant does it all the time. It's, in
18 principle, able to do ten times as much if its
19 plant slips off the track.

20 The point is, I think the regulation
21 should be imposed based on a per kilowatt limit.

22 Now I'd like to draw attention to one
23 other item. On the Green Leaf 1 plant up in
24 Sutter County, it's under 50 megawatts, and as I
25 understand it, exempt from CEC regulation. But it

1 discharges exceeding state water quality limits,
2 and there's a significant amount of discharge.

3 So for this and other reasons, there
4 needs to be better regulatory oversight. The 50
5 megawatt plants are big enough to get you into
6 trouble on things.

7 Thank you.

8 PRESIDING MEMBER LAURIE: Thank you.

9 MS. EDSON: Karen Edson, for IEP.

10 I want to join the chorus of those
11 opposing the elimination of the SPPE processing.
12 It removes an option available to companies that
13 may be proposing relatively small additions to
14 existing plants, and also poses many problems that
15 Mr. Grattan very capably outlined.

16 And I would just note that with the
17 combination with proposals to extend CEC
18 jurisdiction down to zero, the implication is even
19 more far-reaching.

20 Thank you.

21 PRESIDING MEMBER LAURIE: Thank you.

22 MS. WOOD: Hello. I'm still Joan Wood.

23 Mr. Williams spoke about the Green Leaf
24 1 plant in Yuba City, 49 and a half megawatts. My
25 information is it's producing 190 tons of NOx, and

1 its big sister, which is the Sutter Power Project,
2 at 500 megawatts, it's projected at 204 tons of
3 NOx. There are two other 49 and a half megawatt
4 plants in Yuba City. They're seven miles from the
5 site, and I don't have the information on
6 pollution, but it's quite visible if you look at
7 them. I don't think these small plants should be
8 exempted at all.

9 Thank you.

10 PRESIDING MEMBER LAURIE: Thank you.

11 MR. COHN: I would just echo the
12 concerns raised by Ms. Edson, and -- and Mr.
13 Grattan, as well, on behalf of the district.
14 Thanks.

15 PRESIDING MEMBER LAURIE: Okay.

16 Please identify yourself for the record.

17 MR. COHN: Excuse me? Oh. Steve Cohn,
18 representing SMUD. Thank you.

19 PRESIDING MEMBER LAURIE: Anybody
20 representing the silent majority wish to offer
21 comment on this issue?

22 (Laughter.)

23 PRESIDING MEMBER LAURIE: Staff wish to
24 offer any concluding questions or comments on this
25 issue?

1 We'll then move on to Issue 3.

2 MR. O'BRIEN: Okay. Issue 3 pertains to
3 Project Changes. Staff recommends that a new
4 section be added to the act that allows the
5 Commission to extend the project schedule if,
6 after an application is deemed data adequate, an
7 applicant substantially changes the project.

8 In addition, the staff invites comments
9 on whether or not the Siting Committee may also be
10 able to extend the schedule if an applicant fails
11 to provide information that is reasonably
12 necessary for the Commission's timely review of a
13 project and/or an applicant violates an order of
14 the Commission or the Siting Committee.

15 PRESIDING MEMBER LAURIE: Okay. Public
16 comment. Yes, ma'am.

17 MS. HARVEY: Again, Eva Harvey, for
18 Californians for Renewable Energy.

19 We want a most emphatic no on this
20 question. We want you to require a new AFC. The
21 Commission should disapprove the AFC per the
22 California Environmental Quality Act Number 15109,
23 if applicant changes, for whatever reason, results
24 in delays of more than one month in response to
25 data requests.

1 The rationale for this. The plant was
2 not designed before the AFC. Newly designed use
3 developmental path.

4 Thank you.

5 MR. JOSEPH: Good morning,
6 Commissioners. Marc Joseph, for CURE.

7 On this item, I would like to agree with
8 the staff. And I think, taking it a little more
9 broadly, as the Commission thinks about the
10 mandates from SB 110, I think it's in -- at least
11 in the current context, important to keep in mind
12 that the goal, it's not realistic here to have a
13 goal of processing an AFC for a merchant power
14 plant in less than one year.

15 I think we can see from the Commission's
16 experience that even where we have a plant where
17 it is very well managed by the Commission, very
18 well managed by the applicant, community support
19 and no community opposition, you can just barely
20 make a year, if you really are lucky.

21 And given the tremendous influx of new
22 applications, it's really unrealistic to think
23 we're going to do better than that.

24 The real challenge, I think, for the
25 Commission is in the situations where you don't

1 have everything going for you. And the staff is
2 under tremendous workload. There are necessary
3 changes along the way to the project to respond to
4 issues which either were not thought out ahead of
5 time or arise along the way, where the staff is
6 very busy and has conflicting -- conflicting
7 responsibilities.

8 You know, when you have, you know, in
9 this month you may have two or three or four AFCs
10 come in at the same time. They're all going to be
11 on parallel tracks. You've got the same people
12 trying to do the same things, you know, different
13 areas at the same time. I think that's the real
14 challenge that you're facing now, is how to deal
15 with this situation, given, you know, the -- the
16 genuine unreasonable workload that the Commission
17 is facing.

18 And I think, from our perspective, the
19 most important thing is that any changes you make
20 here, and I think this is a really good
21 suggestion, are aimed at preserving the
22 Commission's traditional high level and high
23 quality of analysis. It would really be a shame
24 if, you know, over the next three or four years,
25 when the Commission will be approving a dozen or

1 more new power plants which the state will have in
2 its environmental background for the next 20, 30,
3 40 years, are not carefully evaluated because they
4 happened to all come at once, because they all
5 happened to come in the immediate aftermath of
6 AB 1890.

7 So I want to specifically support the
8 staff's recommendation here, and I think the
9 Commission should have a lot more flexibility than
10 it does to manage its schedule and manage its
11 workload so that it does a good job, because these
12 are important long term decisions the Commission
13 makes.

14 PRESIDING MEMBER LAURIE: Thank you, Mr.
15 Joseph.

16 MR. WILLIAMS: I'm Robert Williams.

17 First, I'd like to endorse the remarks
18 of the previous speaker. I agree with much of
19 what he said. I'd like to clarify my own
20 submittal.

21 It was this question, and another
22 question further down the list, that provoked my
23 suggestion for two tracks. For 30 years, I've
24 watched the lawyers haggle over changes. There
25 will never be a substantial change. They will

1 always be incremental changes. So the lawyers
2 will never allow the CEC to make this modest
3 change to the schedule.

4 That's why I would urge a definition of
5 the standard plant with only very modest changes,
6 and if you start mucking around with the design
7 then it becomes a developmental plant, and you're
8 automatically on the new three year schedule.

9 Now, as I look at my response here, I
10 think it should be yes, give the CEC the authority
11 to make a change, but make a dramatic change, not
12 a nit-picking change.

13 COMMISSIONER ROHY: Excuse me, Mr.
14 Williams. May I ask you a question?

15 MR. WILLIAMS: Yes.

16 COMMISSIONER ROHY: With regard to your
17 standard plant, in one case that comes to my mind,
18 the plant was relatively standard, but during the
19 process of the case, the AFC, the applicant,
20 through public demands and wishes, actually
21 rotated the plant 180 degrees.

22 In that particular case, the
23 transmission lines changed, the gas lines changed,
24 and all the environmental work had to start over
25 again. How would you reflect on that with regard

1 to your standard plant?

2 MR. WILLIAMS: Well, the -- as the
3 Chairman knows, tough cases make poor law, or
4 something to that effect.

5 You know, I would call that a
6 substantial change. I might not mandate the full
7 shift from one year to three years, but I want
8 there to be a big enough club that an applicant
9 realizes he should adhere to standardization and
10 think it through the first time.

11 You know, the one reason to rotate a
12 plant is the presence of some aerodynamic effect
13 that makes you want to put the cooling towers
14 further from a hill, or something. But generally
15 speaking, a big change is a big change. And the
16 guy should've known better when he didn't do his
17 homework.

18 MR. ALVAREZ: Manuel Alvarez, with
19 Southern California Edison.

20 I guess this particular item was one of
21 the areas where past, future, present kind of get
22 clouded a little bit.

23 The way I read the write-up it basically
24 assumes that the applicant is proposing the
25 change. You have to deal with the question of

1 where the change is coming from. If it's part of
2 a process and it's part of the deliberation that
3 goes on within the context of the case, you should
4 allow that flexibility for the applicant to
5 actually make the changes.

6 But if you're dealing with an applicant
7 from the beginning, and the project changes, then
8 you may want to have the flexibility you're asking
9 for in this particular case.

10 It depends on whether you view the AFC
11 as merely examining what's being proposed, or
12 allow it to develop into a deliberative process to
13 make changes as the project proceeds to
14 certification. And it's unclear to me, in reading
15 this write-up, which approach you're taking.

16 PRESIDING MEMBER LAURIE; Well, let me
17 ask a question about that, Manuel. Let's say
18 halfway through the process, and an environmental
19 issue arises that was not apparent at the time of
20 the filing of the AFC. Or, on the other hand, due
21 to an applicant's desire to satisfy local
22 community need.

23 If, because of either one of those a
24 substantial modification has to be made to the
25 AFC, thus requiring substantial additional

1 environmental analysis, then does it make any
2 difference whether or not it was part of the
3 original application or not?

4 MR. ALVAREZ: Well, I guess those are
5 two -- two significantly different things. One is
6 the applicant either totally ignored an issue or
7 was not aware of an issue, then you have to deal
8 with the front end process of the certification.
9 Why wasn't that available during the preparation
10 of the application process to the applicant. If
11 that issue was totally missed and had to be
12 surfaced. You would imagine that either the staff
13 or the applicants would know what issues are, in
14 fact, going to be before the Commission and what
15 the current environmental requirements are.

16 So you'd have to delve into the question
17 of what happened, and why was that particular
18 issue missed. So that -- that gives you one
19 particular answer.

20 If the process is involved in part of
21 the negotiation and deliberation within the
22 community, or participants, they should have the
23 opportunity, in fact, to participate in what that
24 final mitigation looks like. And that's an item
25 that could be handled during the case, because

1 it's part of that negotiation process to
2 resolution of an environmental issue that was
3 known.

4 So the question, to me, is one, whether
5 you know an issue that you should've known, or you
6 want to negotiate and resolve an issue that's
7 currently before the public.

8 PRESIDING MEMBER LAURIE: Well --

9 MR. ALVAREZ: It still places you in the
10 dilemma of how you resolve the issue.

11 PRESIDING MEMBER LAURIE: If -- if an
12 applicant is sitting down with a group of
13 neighbors, and ultimately decides to make a change
14 to satisfy the need of the neighborhood, does not
15 the law demand an environmental analysis of what
16 the project ultimately looks like regardless of
17 the reason that the application has been modified?

18 MR. ALVAREZ: Well, the issue would've
19 been known when the application was submitted as
20 part of data adequacy. If, in fact, the issue was
21 -- was identified.

22 You have two -- at least from my
23 perspective, I still see two situations, where you
24 have an issue that's totally missed, not
25 identified in the application in the first place,

1 that surfaces, that needs to be resolved. And the
2 other issue where you have an issue that you want
3 to negotiate and resolve with mitigation or an
4 alternative to that particular activity, that's an
5 item that I believe the applicant and the staff
6 could resolve during the process, and you could
7 address that.

8 Providing you the flexibility, once
9 that's identified as a particular problem, and
10 saying back to -- to the Siting Committee or the
11 committee who's processing the application, you
12 need to exert some discretion and allow a
13 suspension or a delay of the process, should be
14 agreed to by the parties who are involved in that
15 deliberation.

16 PRESIDING MEMBER LAURIE: Would you
17 agree that the law commands that the environmental
18 analysis be conducted on the -- on the project as
19 ultimately sought to be approved?

20 MR. ALVAREZ: Yes.

21 PRESIDING MEMBER LAURIE: Okay. So if a
22 project description is modified because the
23 project applicant desires to reach accommodation
24 with the neighborhood community, but the
25 description of the project therefore results in a

1 modification, then how do you get around the fact
2 that, as you've indicated, and which I most
3 certainly concur, that the law commands an
4 environmental analysis of what ultimately is
5 brought forth as the desired application?

6 MR. ALVAREZ: I guess -- I guess at that
7 point I would envision that the participants who
8 are involved in the case would assess what -- what
9 the extent of the analysis is necessary for that
10 particular change. And that would be identified
11 to you as a committee, and saying we need X number
12 of days to process this additional information, is
13 that adequate for all the participants. The
14 committee at that point would render a judgment
15 saying yes, we would allow that analysis to be
16 extended for X number period of time.

17 But that -- but from my perspective,
18 that's different from an issue that is not
19 identified in the application at its origins, when
20 it starts.

21 PRESIDING MEMBER LAURIE: Okay.

22 COMMISSIONER ROHY: Mr. Alvarez, we've
23 heard a lot of comments this morning, especially
24 early on in the general comments, about public
25 input. And I think it's important, because we do

1 have a number of exemptions from the NOI, that we
2 get public input on -- on power plants. In many
3 of those cases, the public gets wound up or warmed
4 up after the AFC gets approved and found data
5 adequate -- excuse me, is found data adequate.

6 Many of the cases that the public brings
7 up or the issues are not necessarily technical or
8 about the power plant voltage, power, or that.
9 But a lot of them are visual impacts. The
10 rotation of the plant for visual, perhaps
11 undergrounding power lines, taking a different
12 route for the power lines. Things that only
13 become apparent when you get the large amount of
14 public input.

15 And I believe it's our duty to respond
16 to public input. How would you figure this in,
17 when it in fact does impact the environmental
18 studies?

19 MR. ALVAREZ: I guess many of those
20 issues, you know, are perhaps a little softer in
21 terms of their evaluation and the standards by
22 which you -- you judge a facility. And so they're
23 very difficult questions.

24 But I guess how I would resolve that
25 issue is basically through the effort with the

1 public up front, during the initial filing of the
2 date -- of the application, before data adequacy
3 is determined, so that the public has enough
4 outreach information and participation in that
5 particular activity.

6 MS. EDSON: Karen Edson, for IEP.

7 IEP is very reluctant to buy into this.
8 I'm sure that's no surprise to people here. But
9 let me -- let me just say a little more about
10 that.

11 I think you're getting at the crux of
12 the issue in this discussion. There are many
13 project changes that really come about as a result
14 of public input and concerns, and developers are
15 simply trying to be responsive to those community
16 needs. There may be some ability in that context
17 to address some of those issues as mitigations, as
18 opposed to project changes. I -- I defer to the
19 attorneys to decide how that can be managed.

20 But I'm a consultant that advises my
21 clients not to make any changes, if they can.
22 Because this process is one that forces the
23 analysis back to square one, in many cases, when a
24 project itself is changed. And there -- there are
25 a couple of reasons for that. One is that it

1 forces it back. The Commission does have some
2 ability in this process to get changes of the
3 schedule.

4 I mean, it's -- as we're all aware,
5 there are some projects that have come before the
6 Commission that have taken a number of years to
7 come through the process. And it's when the
8 developer is faced with the question, okay, you
9 can get an answer in 12 months, but the answer's
10 no. So you think about it. Do you want to change
11 the schedule or not? And, but when the Commission
12 takes that step, then pretty soon and pretty
13 quickly you see developers accepting an extended
14 schedule.

15 But another reason that -- that
16 developers, I think, are very reluctant to accept
17 changes in the deadlines is that it's very open-
18 ended. You have a 12 month schedule that the
19 Commission is bound to adhere to, and does its
20 darnedest to adhere to, which is something that we
21 are very appreciative of. But there's nothing,
22 there's no mechanism contemplated in this proposal
23 for -- and in any others I've heard, where if
24 there is any kind of need to change a schedule,
25 but it's a finite change to the schedule,

1 instead, it's okay, you've let that one got. So
2 now we've got an infinite amount of time to
3 process this application.

4 So this is a difficult issue, and one
5 that, you know, as I said, we -- the 12 month
6 schedule is very important to the development
7 community, and one that we do not want to see
8 changed or weakened. Having said it, there are
9 many reasons, there are many legitimate reasons
10 that projects can be changed, and also many
11 legitimate reasons that developers will resist
12 change because of these scheduling kinds of
13 issues.

14 PRESIDING MEMBER LAURIE: Thank you, Ms.
15 Edson.

16 MR. FREDERICK: Commissioner Laurie,
17 Jesse Frederick.

18 I guess you -- you have two
19 considerations here that I see. One is
20 procedural, and that is certainly, having seen the
21 extension process take place in the current
22 framework, it's very difficult and problematic for
23 the Commissioners to negotiate an extension with
24 the project proponent who wants to force their
25 project through the process.

1 And I think to that end, it would be
2 beneficial if the Commission itself had the
3 ability to, for whatever reason, negotiate with
4 the proponent to establish, as Karen pointed out,
5 it has to be a definite timeframe. It can't be
6 indefinite in nature. And so perhaps a 90 day
7 extension should be the boundary established on
8 any extensions that are granted.

9 I think there are some other process
10 questions that arise when you start talking about
11 this, and that is you're going to find developers
12 wanting to put in as much alternative in their
13 first submittal as possible, and that in some ways
14 is counterproductive to focusing in on the
15 project. Certainly you want to cover as much
16 territory as you can, and then cut away what's
17 inappropriate. And you may end up with a much
18 larger AFC submitted.

19 Also, I think you need to come up with
20 some clear definitions as to what constitutes a
21 viable trigger point for an extension. I can
22 imagine that improvements such as mitigations, as
23 Karen pointed out, look a little more different
24 than something that's a change due to commercial
25 reasons. And I think that there could be some

1 definitions made there.

2 And it also raises the question how
3 staff will handle shifting priorities, when you
4 have a number of projects vying for approval, and
5 one project in the front of the queue gets an
6 extension, and another project is more complete
7 and is not subject to change. And I just -- I
8 view those as just questions, not challenges to
9 the process of changing the way we get extensions.
10 But certainly I think they need to be considered.

11 Thank you.

12 MR. HARRIS: Good morning. My name is
13 Jeff Harris, I'm with the law firm of Ellison and
14 Schneider, and I appreciate the opportunity to say
15 a few words on this subject.

16 I want to talk about the siting process,
17 because that's what we're here to talk about.
18 That CEC siting process is designed with the
19 expectation of change. It's designed with the
20 expectation that during your 12 month period, the
21 project will change. It's designed with the
22 expectation from the time the AFC is submitted to
23 your final decision, that the project will change.
24 That -- that is the process. That's why we have a
25 12 month process.

1 If you compare that to a local
2 government situation where you have essentially
3 usually a planning commission meeting, and then a
4 final action, sometimes at one giant meeting, I
5 think it's one of the reasons that people get
6 confused about your 12 month process is they come
7 to the first meeting and they think they're going
8 to stop the power plant. And it's like well,
9 we're at the very beginning.

10 So I just say that to emphasize what the
11 process is about. And to use an example of why I
12 think that is the case, I have an example I refer
13 to as the -- the perverse nature of this process.
14 And what do I mean by that?

15 If you bring your project in and you
16 take it to the end without any changes, you will
17 be slammed for not listening to people. You're
18 not listening to us, you're not changing the
19 project, you're not listening. Usually it means
20 you're not capitulating to our demands.

21 Or, at the other extreme, if you do
22 listen to people and you do change your project,
23 you hear this very argument that you've changed
24 the project, start over.

25 So either way, you're going to get

1 slammed in this process, and it is what I refer to
2 as kind of the perverse nature of the process, but
3 it's inherent in the process. And we all need to
4 understand that the process does contemplate
5 changes.

6 Somebody mentioned that the possibility
7 of change might throw you back into the beginning.
8 From a policy perspective, you're in a possible
9 bind here where you're going to force people to be
10 unbending to take a look at their project and say
11 that might make this a better project, but I can
12 probably mitigate it, and I don't want to take the
13 risk of making that kind of change, so I'll refuse
14 to do that, try to mitigate my way out of it, if
15 you will.

16 And I think one of the fundamental
17 problems with the -- with the discussion this
18 morning is the confusion. And that's a confusion
19 between a project change and a project mitigation
20 measure. It's a fundamental important distinction
21 to make. When you talk about changing that
22 project to have fewer environmental impacts,
23 that's a mitigation measure. And that's an
24 important distinction to make, and that's the way
25 CEQA operates. CEQA contemplates that you're

1 going to change your project by implementing
2 mitigation measures to make it a better project.

3 So one of the most, I guess one of my
4 greatest concerns when I saw this one initially is
5 well, what is a project change? And we've heard a
6 lot of discussion about what's the impetus behind
7 that change, and I think that's an important
8 thing, as well.

9 Finally, I want to echo IEP's comments,
10 as well, on the 12 month schedule. That's an
11 important thing from a developer standpoint. It's
12 the only legally enforceable deadline that the
13 developer has, and as we've seen in the past, when
14 projects go out past 12 months there's a strong
15 moral commitment by the committees to get these
16 things done quickly, and they haven't taken an
17 indefinite amount of time. But from a project
18 developer's standpoint, there's no mechanism there
19 for me to point to once I've gotten past my 12
20 months, to say we need to make this a priority to
21 get it done now. And I think that's a major
22 shortcoming in the entire process.

23 And then finally, just kind of
24 foreshadowing this afternoon. I think
25 communication and the ex parte rule, I look

1 forward to that discussion, because I think a lot
2 of these questions about changes and what have you
3 are communication problems, and not so much
4 information problems.

5 That concludes my remarks.

6 PRESIDING MEMBER LAURIE: Jeff, let's
7 talk about the local process for a minute.

8 MR. HARRIS: Which you know better than
9 I, so. But, yeah, I do know about it.

10 PRESIDING MEMBER LAURIE: One, I -- I
11 think it is a rare instance where you have a
12 substantial project the result of a combined
13 planning commission and city council or board of
14 supervisor meeting. So I don't -- I really don't
15 want to consider that. Certainly there are
16 lessons learned in the local process that could or
17 should be considered as part of our process.

18 But let's look at a local subdivision.
19 And let's assume that I have an application in for
20 100 houses, and I intend to access out to Avenue
21 A. And there is an environmental analysis
22 conducted of what the repercussions are of
23 accessing out to Avenue A, and sure enough, it
24 turns out that there's erosion problems and the
25 neighborhood is concerned about that because

1 there's too many residents, and too many young
2 kids out on Avenue A.

3 And so I negotiate with the
4 neighborhood. And I have my neighborhood meetings
5 and -- and I determine that okay, and I really do
6 it because I know I'm -- I have a greater
7 likelihood of getting three votes from my city
8 council if I go out to Avenue B. So I'm going to
9 use Avenue B. Does not the law require the
10 environmental analysis for the project to consider
11 access out through Avenue B? However long that --
12 that takes.

13 So my project has changed as a result of
14 my negotiation with you. My project is no longer
15 access to Avenue A. My project is now access to
16 Avenue B. What are my obligations under the law
17 for that environmental evaluation?

18 MR. HARRIS: Let me make sure I
19 understand the question. I feel like I'm back in
20 moot court, by the way, so.

21 You had a project that went to Avenue A,
22 and now it's going to Avenue B. Is Avenue B
23 farther out, or is it just a different access
24 point?

25 PRESIDING MEMBER LAURIE: Oh, different.

1 Instead of going north, it goes east.

2 MR. HARRIS: Well, I think that's -- let
3 me back up first off. On the local government
4 analogy I started with, I think you're exactly
5 right. Most large developments that you're
6 discussing are going to involve a longer process
7 with an EIR, and -- and workshops, and those kind
8 of things. I -- the one stop city
9 council/planning commission, I was thinking about
10 more discretionary actions, like removing a fence
11 or having an eight foot fence instead of a six
12 foot fence, taking out the elm tree, that kind of
13 thing. Not -- not land use entitlement things.

14 PRESIDING MEMBER LAURIE: Okay. Well,
15 let's put that aside.

16 MR. HARRIS: Okay. If you are going to
17 be fundamentally changing your project, and you're
18 going to have a different set of impacts, then
19 that's one issue. If your decision to use Avenue
20 B is proposed as a mitigation measure that will
21 result in fewer environmental impacts, and those
22 impacts have been analyzed and set forth in the
23 public record, then I think you can move forward.

24 There's obviously no bright line answer
25 here, though. As you know, if you change that

1 project from 100 houses to 200 houses, that's a
2 different project. That's a pretty clear line.
3 If you're going to change lot sizes and
4 configurations and still have 100, that's also a
5 different -- different project.

6 Those are all very fact specific issues.
7 And -- and I think in a way you're -- you're
8 making the point that I was hoping to make, and
9 it's taking me a long time to get there, is that
10 these are very fact sensitive. And one of the
11 things I was concerned about in the
12 recommendations is that it talks about allowing
13 for schedule changes based upon unique
14 circumstances. Each and every one of these
15 projects has unique circumstances. That's one of
16 the reasons I know I'll always have work. You
17 can't cookie cutter these things. They're all
18 unique.

19 And I feel like this -- this
20 recommendation was more argumentative, to use the
21 legal term, than the other ones, because it
22 assumed -- and I think Manuel was trying to get at
23 this -- it assumes certain underlying reasons for
24 those changes. I think they are going to differ
25 on a case by case basis. Sometimes they're going

1 to be responses to the community. Sometimes
2 they're going to be responses to Commission input.
3 Sometimes they're going to be that somebody didn't
4 do their homework and think it through. And I
5 think those are different cases.

6 PRESIDING MEMBER LAURIE: Let me go back
7 to a comment that I thought you made, and that is
8 if as a result of negotiations there's a
9 modification to Avenue B, but the public record
10 shows that there's already been an analysis, well,
11 then, additional time should not be necessary. I
12 -- I thought that's what your comment was.

13 But that's exactly the point. The point
14 is, has that analysis been made. If the analysis
15 has already been made, well then staff is not
16 going to be requesting additional time to make the
17 analysis that's already been made. The purpose
18 for the extension would be to make the analysis.

19 Now, the switch to Avenue B and
20 additional time request presupposes that, in fact,
21 when the project was submitted, the environmental
22 analysis was done with Avenue A as access.
23 Negotiations or change in circumstances suddenly
24 has Avenue B as access, and I think we all agree
25 that environmental law demands the environmental

1 analysis of the project. If the project is access
2 to Avenue B, well then that's what has to be
3 examined.

4 If it's already been done, because it
5 was submitted as an alternative or otherwise
6 separately considered, well, then additional time
7 would not be required.

8 Mr. O'Brien, is that your understanding
9 of the circumstances and the basis for the
10 request?

11 MR. O'BRIEN: Well, when -- when staff
12 put this out, our concern was that you could have
13 a situation where an applicant could make a
14 unilateral decision, if you will, to substantially
15 change a project which would have a major impact
16 while the project --

17 PRESIDING MEMBER LAURIE: Well, let me
18 interrupt you there. Why do I care if it's
19 unilateral? Why do I care why the applicant wants
20 to change the application? Maybe the applicant
21 wants to change it because they've run their
22 numbers and they want to change it because of
23 economics. Maybe they want to change it because
24 there's political problems locally, and they want
25 to satisfy the neighborhood.

1 Applications are, by their very nature,
2 unilateral. So I don't know what a non-unilateral
3 application change is.

4 MR. O'BRIEN: Well, the staff recognizes
5 the concerns expressed by a number of the
6 individuals here regarding what type of change in
7 the circumstances have brought it back. The staff
8 agrees that it is somewhat of an iterative
9 process, and that applicants oftentimes will make
10 changes to their project based upon input from
11 members of the community, other agencies, or the
12 staff itself.

13 Normally, what happens is that all the
14 parties try to work expeditiously on those
15 changes, and to accommodate those. Sometimes
16 those can be accommodated in a 12 month schedule,
17 and sometimes they can't.

18 But there have been instances, if you go
19 back over siting case history, where applicants
20 have, three or four or five months into the
21 process, made major changes to the project which
22 have caused the Commission great difficulty from a
23 scheduling standpoint. Staff believes there needs
24 to be a mechanism available to the Commission to
25 deal with that type of situation.

1 MR. HARRIS: Can I go back to Avenue A
2 and B for just a second?

3 PRESIDING MEMBER LAURIE: Sure you can.
4 You can finish that one.

5 (Laughter.)

6 MR. HARRIS: Since there's a new project
7 site.

8 My answer to that I think was a little
9 rambling. But I think all of this comes back to
10 the question of impacts. If we're dealing with an
11 impact on Avenue A and Avenue B, and the impact is
12 the same, and the question of whether Avenue A or
13 Avenue B is the better mitigation -- let me be
14 specific.

15 Say, for example, Avenue A is going to
16 create traffic congestion at Avenue -- I'll say C.
17 If the impact is traffic congestion at that
18 intersection, and by going to Avenue B you're
19 mitigating that impact, then I think that's --

20 PRESIDING MEMBER LAURIE: Okay. Let me
21 stop you right there. How do you know what the
22 impact is on Avenue B until you study what the
23 impact is on Avenue B?

24 MR. HARRIS: Sounds like a trick
25 question.

1 (Laughter.)

2 PRESIDING MEMBER LAURIE: Do you agree
3 that you have to --

4 MR. HARRIS: You -- you have to -- you
5 have to know the impacts. The impacts have to be
6 identified, clearly.

7 PRESIDING MEMBER LAURIE: Okay. And
8 that's what this is all about.

9 MR. HARRIS: Right.

10 PRESIDING MEMBER LAURIE: What it's all
11 about is time necessary to study the impacts on
12 Avenue B. If it's already been done, well then
13 there's no more to do.

14 MR. HARRIS: Right. Exactly. And even
15 if the impacts are fewer, let's use an example
16 where the change in the project is going to have
17 less impacts than the -- the originally proposed
18 project. That still has implications for staff,
19 and we understand that. Even if the staff has to
20 go into their analysis, open it up and say now
21 we're at a place where we have fewer impacts, that
22 still takes staff time. And I want to acknowledge
23 that, as well.

24 So even the -- what applicants will call
25 kind of improvements to the project do have staff

1 workload implications.

2 PRESIDING MEMBER LAURIE: Thank you,
3 Jeff.

4 MR. WILLIAMS: One more comment, if I
5 may. Jeff has helped me make several of my
6 points.

7 I think this shows the attitude of most
8 applicants, that they would like to use the one
9 year process to continue the design efforts of the
10 plant up to the last minute on the -- under the
11 aegis, apparently, of helping the public.

12 In one example, we provide louvers on a
13 stack in order to mitigate the visual impact.
14 Now, the applicant should've known, because he had
15 to file for exception to ordinances, that stacks
16 could not be higher than 90 feet in that area.

17 Now, is it the applicant's fault or the
18 public's fault, when the first submittal of the
19 application doesn't meet air quality limits, and
20 so he has to make a second submittal. Seems to me
21 that's clearly the example of just in time design,
22 oops, we forgot to consider that, and that's
23 precisely the situation in which you shift from a
24 fast track to a slow track.

25 Thank you.

1 PRESIDING MEMBER LAURIE: Thank you,
2 sir.

3 MR. WILLIAMS: Just like banking
4 addresses all this.

5 PRESIDING MEMBER LAURIE: Ms. Edson.
6 Karen, were you going to comment?

7 Okay. Sir.

8 MR. GARBETT: William Garbett, speaking
9 on behalf of the public.

10 The CEC generally proposes a very unique
11 and fast paced schedule that they generally adhere
12 to, by and large, and you complete things within
13 the 12 month process. It is fair, because time is
14 money to a developer. And, in fact, if he's done
15 his homework, all parties will get a good job
16 done.

17 However, there is, with any project,
18 certain what you might say correction of clerical
19 errors, and other such things, that is generally
20 done in order to keep what you might call a
21 standard configuration, where you know where the
22 project is at each stage of the proceedings. You
23 have configuration management.

24 And with that, the application, as it is
25 submitted to the Commission in the very beginning,

1 is the utmost criteria that you have to go on.
2 This is your 12 month limit.

3 If that application has errors of
4 material fact, or actual sections are actually
5 removed and replaced, it no longer is the
6 application the Commission has jurisdiction on.
7 It must be rejected. It may be rejected without
8 prejudice, which means that you can re-file it
9 again. And I hope the Commission at that point in
10 time makes use of prior staff work and refers to
11 the previous application so as to accelerate the
12 schedule when a secondary application is filed, so
13 that the applicant, you might say, may actually
14 approach the original 12 month deadline that he
15 originally was after. But dismissing an
16 application without prejudice.

17 Or sometimes he blew it, he was
18 dishonest, he threw a cookie cutter at you that
19 didn't even apply to the circumstances, and what
20 he did was he was writing his application through
21 the proceedings. He didn't have his homework done
22 in the very beginning. In those cases, it should
23 be dismissed with prejudice, or don't come back
24 with this at the same site with the same data
25 again.

1 So you have to make a decision there.
2 Is the application valid, with adjustments that
3 you make, or is it a different application and
4 material fact.

5 Thank you.

6 PRESIDING MEMBER LAURIE: Thank you,
7 sir.

8 MS. WOOD: Joan Wood, again. My subject
9 is alternative siting, and I'm not sure how it
10 could have been better handled, but I do want to
11 point out that in the case of the Sutter Power
12 Project, there were either seven alternative sites
13 or eleven. The same public hearings were held,
14 and the Department of Energy, as well as your
15 Commission, used the testimony. Ellison and
16 Schneider, who are CalPine's lawyers, stated that
17 they were flexible in regard to alternative
18 siting.

19 But I want to point out something, that
20 there was a public statement on June 29th, 1997.
21 That was six months before the public process even
22 began. And it states here clearly that -- that
23 CalPine will be building a third natural gas power
24 plant next to its facility at Township and Oswald
25 Roads. And that's exactly where the permits ended

1 up.

2 And in the course of the public process,
3 which occurred throughout '98 and into the first
4 part of '99, one of the alternative sites was
5 eliminated for the reason that in the future there
6 were going to be regulations prohibiting
7 obstruction of the view of the Sutter Buttes. In
8 the future, not then. In the future.

9 Another site was eliminated, actually a
10 better site nearby, because, quote, two-thirds of
11 the owners did not want to sell. I've talked to
12 two of those owners. No price was ever offered.

13 I think it behooves the Commission to
14 somehow arrange that there be better oversight, I
15 think is the word, or better verification of the
16 entire aspect of alternative sites.

17 Thank you.

18 PRESIDING MEMBER LAURIE: Thank you.

19 Anybody else? Ms. Mendonca.

20 PUBLIC ADVISER MENDONCA: Roberta
21 Mendonca, the Public Adviser.

22 I have -- my responses have no benefit
23 of Road A or B. So there were five responses that
24 were supportive of the concept of moving the
25 application and providing additional time to deal

1 with changes. And there were three that were
2 opposed to that concept, and I would just share
3 two comments from Scott Schultz on the no, in that
4 he felt that perhaps if the applicant were charged
5 an application fee for the costs of coming to the
6 California Energy Commission to review the
7 application for certification, they would come
8 with a more complete document. Therefore, you
9 would need fewer changes and extensions.

10 And his perspective was that it should
11 definitely be a 12 month process, because it does
12 place a tremendous burden on the community for
13 local participation in the process. And rather
14 than string it out longer, the community should be
15 able to look towards a time certain, as well.

16 PRESIDING MEMBER LAURIE: Thank you.

17 Next item.

18 MR. O'BRIEN: The next item is eminent
19 domain. The staff is recommending that the
20 Commission be given authority to exercise the
21 power of eminent domain on behalf of any licensee
22 whose project is shown to be in the public
23 interest and necessity.

24 (Inaudible asides.)

25 PUBLIC ADVISER MENDONCA: Is this time

1 for public comment?

2 PRESIDING MEMBER LAURIE: Well, I don't
3 know. We're -- was that it, Mr. O'Brien?

4 MR. O'BRIEN: Yes.

5 PRESIDING MEMBER LAURIE: Wait, wait,
6 wait. Wait. Ladies.

7 Were you finished, Terry, with your --

8 MR. O'BRIEN: Yes.

9 PRESIDING MEMBER LAURIE: -- with your
10 explanation?

11 Question to you. Are you talking about
12 eminent domain for a project for site control, for
13 the project, for transmission, or all the above?
14 Anything within the jurisdiction of the Energy
15 Commission?

16 MR. O'BRIEN: That's correct. Anything
17 within the jurisdiction of the Energy Commission.
18 The staff hasn't differentiated between
19 transmission lines or power plants or pertinent
20 facilities.

21 PRESIDING MEMBER LAURIE: And --

22 MR. O'BRIEN: Though -- though one could
23 make that argument, that there should be a
24 differentiation.

25 PRESIDING MEMBER LAURIE: And you're not

1 putting out on the table today any particular
2 standard or criteria or findings necessary to
3 permit eminent domain, but rather you're just
4 putting out the concept of whether eminent domain
5 authority should rest in the hands of the Energy
6 Commission.

7 MR. O'BRIEN: That's correct.

8 PRESIDING MEMBER LAURIE: Commissioner
9 Rohy.

10 COMMISSIONER ROHY: Just a
11 clarification. I'm not an attorney, and that's
12 always a good start to say that.

13 (Laughter.)

14 COMMISSIONER ROHY: But does that -- Mr.
15 O'Brien, in your discussion here, does that mean
16 that we, the Commission, would exercise the right
17 of eminent domain, or we would -- what is the
18 proper term -- delegate it?

19 MR. O'BRIEN: Not being an attorney
20 myself, there may be two ways to do that. I think
21 in some of the discussions that staff has had it's
22 probably more comfortable with that authority
23 resting with the -- directly with the Commission.

24 COMMISSIONER ROHY: Thank you for that
25 clarification.

1 PRESIDING MEMBER LAURIE: Thank you.

2 Ms. Larsen.

3 MS. LARSEN: Thank you.

4 PRESIDING MEMBER LAURIE: Ma'am.

5 MS. LARSEN: Does it matter?

6 PRESIDING MEMBER LAURIE: No, go ahead.

7 MS. LARSEN: Robin Larsen, with the

8 California Independent System Operator.

9 Also not an attorney, but became

10 painfully aware of the law when I went to the ISO

11 in 1997 and one of my first assignments was to go

12 get eminent domain authority for the ISO.

13 And I'm not -- should I use this one?

14 Is that what you're saying?

15 PRESIDING MEMBER LAURIE: No, both. One

16 -- one's for recording, the other one is for

17 amplifying.

18 MS. LARSEN: So it was an interesting

19 first project, and while I wasn't naive enough to

20 think that I could trot across the street and get

21 legislation to get eminent domain authority for

22 the ISO, I at least thought people would listen to

23 me. But we're still -- people are still trying to

24 figure out who we are and what we do.

25 And I guess I also need some

1 clarification, and this does get into your issue
2 on site control. I wasn't real sure what that
3 meant, if it means that developers or people need
4 to have some abilities to have eminent domain, or
5 whatever permitting rights. I guess I need
6 clarification on that.

7 But in general, I think ISO would
8 support the ability of a government agency, I
9 don't want to pick which one because those kind of
10 turf fights I don't -- well, we'll have them soon
11 enough, I'm sure. But I think I generally support
12 the notion of a government agency having the
13 ability to confer eminent domain authority upon
14 appropriate entities.

15 The way it's listed here in your
16 outline, it looks like the authority would be
17 conferred upon, or exercised on behalf of
18 licensees. And I guess I'd like to clarify that
19 the ISO may be one of those entities that -- where
20 it would be appropriate for you, or whatever
21 appropriate agency, to confer the authority on
22 behalf of the ISO to make a distinction between
23 reliability and economically driven projects,
24 which is outlined in our tariff.

25 I believe that with reliability

1 projects, the ISO probably has -- well, we do have
2 the ability to order transmission owners to build
3 transmission, and also to tell them they need to
4 exercise eminent domain authority, seek all the
5 appropriate permits. And I don't think there's
6 any dispute about that.

7 With economically driven projects,
8 however, the ability to use eminent domain
9 authority is a lot less clear. First of all, it's
10 not clear that we'd be ordering the TO's to do
11 this. It may be that the ISO goes out and
12 contracts to builders. And I'm speculating, I'm
13 not presuming anything.

14 You do need to, under the law, show some
15 public benefit. It needs to be to the benefit and
16 convenience of the public, and it may well be that
17 we propose eventually economic projects that we
18 can argue are to the benefit and convenience of
19 the public, to the extent they relieve congestion.
20 For example, that may be an economic benefit to
21 the public.

22 These are issues that, as far as I know,
23 have not been dealt with anywhere else. We've got
24 a lot of groundbreaking to do here. But I would
25 like to -- to support the notion of moving to a

1 more level playing field with regard to eminent
2 domain. I'm sure my utility friends will be
3 talking about their level playing field issues,
4 and that whatever merchant transmission people, or
5 whoever goes and builds transmission should have
6 basically the same obligations as the utilities,
7 but I don't want to speak for them.

8 That's all on this issue. Could I ask,
9 plead with the Commission to make a couple other
10 statements, because I'm not sure that I'm going to
11 be here this afternoon? They're very general. Is
12 that appropriate, or would you rather --

13 PRESIDING MEMBER LAURIE: Yes, it is
14 appropriate.

15 MS. LARSEN: Okay. They're -- they're
16 very general, and they go to agency coordination.
17 I wanted to just announce that we've been working
18 closely with CEC Commission staff on an MOU in the
19 siting area, and I'm really proud of what we've
20 been able to do, and really pleased with the
21 cooperation at the staff level. We're almost
22 ready to submit this to senior management. We're
23 waiting for some confidentiality agreements so
24 that information is protected. That's a concern
25 among all parties who submit that kind of

1 information.

2 I have one request that I usually make
3 in these regards, and that is that whenever the
4 Commission suggests regulatory changes that
5 require things of people, that I prefer the word
6 request when it comes to the ISO, just to get out
7 of that regulatory turf. And as it happens, I
8 think the word request has worked just fine with
9 us.

10 Finally, transmission line coordination
11 consolidation of siting. I -- I support that. I
12 think we all think it's a good idea that -- that
13 we deal with one agency in that regard. We think
14 that's a good idea.

15 And that's all I have to say. Thank you
16 for your time.

17 PRESIDING MEMBER LAURIE: Thank you, Ms.
18 Larsen, very much.

19 MS. LARSEN: Any questions?

20 PRESIDING MEMBER LAURIE: Thank you.

21 MS. HARVEY: Eva Harvey, again, for
22 Californians for Renewable Energy.

23 Again, on this question, we have an
24 emphatic no, because we consider this a power
25 grab. This makes the CEC more of an advocate for

1 the plants. Only public authorities, including
2 regulated utilities, have the power of eminent
3 domain, and that's the way it should remain.

4 PRESIDING MEMBER LAURIE: So do you --
5 do you not believe that this is a public agency?

6 MS. HARVEY: I'm referring to the power
7 plant applicants, private for profit corporations,
8 which is what's going on in the State of
9 California now, is my understanding.

10 PRESIDING MEMBER LAURIE: Okay. Well --

11 MS. HARVEY: And utilities' holding
12 companies should have no such authority, as far as
13 we're concerned. They need site pre-qualification
14 and site banking to qualify as a bidder to Cal-
15 ISO.

16 I personally consider this a power grab.
17 I've been them passed many years ago, down in
18 southern California, when a man was -- had his
19 property taken, supposedly for public interest,
20 and he held out against the sheriff and it was a
21 horrible situation. And the piece of property
22 that they ended up taking, they just made it into
23 a parking lot, which was not the original intent.

24 I think eminent domain needs to be very,
25 very carefully applied and looked at.

1 PRESIDING MEMBER LAURIE: I don't think
2 anybody in this room will disagree with you.

3 MS. HARVEY: Thank you.

4 PRESIDING MEMBER LAURIE: Thank you.

5 MR. FREDERICK: Jesse Frederick. I
6 guess the big question of eminent domain has more
7 to do with the linear portion of a power plant's
8 siting, other than the actual site of the facility
9 itself. Linears can really have a tremendous
10 impact on various property owners, and right now
11 we currently have, if you consider electrical
12 transmission, gas interconnects, and possible
13 water supply issues, you can have three separate
14 public agencies able to assert eminent domain, and
15 I think these -- these issues related to eminent
16 domain should be consolidated.

17 I think the Energy Commission certainly
18 is -- is fully capable of doing this, and probably
19 doing it much better than each individual agency
20 as it relates to this particular power plant.

21 Regarding transmission, I go back to my
22 question concerning the CPUC process that
23 currently exists, which is the 131-D process for
24 the generator special facilities agreement. I
25 think it needs to be specifically looked at.

1 It'll have a tremendous impact on what the ISO
2 does, in terms of directing activities of
3 transmission owners, as it relates to a specific
4 non-utility generator licensing process.

5 Thank you.

6 PRESIDING MEMBER LAURIE: Thank you,
7 sir.

8 Mr. Williams. And anybody else want to
9 speak on this issue? Mr. Alvarez? Okay, why
10 don't you come up.

11 MR. WILLIAMS: Thank you, sir. You can
12 see from our comments on page one that we believe
13 -- I believe, let's leave we out of it -- that
14 this makes the CEC look more and more like an
15 advocate for the power company. And I'm arguing
16 in my first remarks on vision, that you should
17 appear to be an independent regulatory agency.

18 So this is really bad optics to be out
19 getting eminent domain. I'm dumbfounded to read
20 the staff discussion here. Everybody wants a
21 level playing field, but they want it to be
22 totally level. The advantage that a gas turbine
23 power plant has is a fast schedule, if they put a
24 standard plant in a benign location. If somebody
25 wants to put a coal plant at the suburbs of San

1 Diego, the Coastal Commission and a whole bunch of
2 people are going to get into the act.

3 So the California Energy Commission does
4 not need to level the playing field for a playing
5 field that's already relatively level for combined
6 cycle gas turbine power plants. Let them have the
7 one challenge that remains for them, to do a
8 suitable siting job in a non-attainment area. And
9 that really means to put in a EPA attainment area,
10 where the air quality is good enough to tolerate
11 it.

12 Thank you.

13 PRESIDING MEMBER LAURIE: Thank you.

14 Mr. Alvarez.

15 MR. ALVAREZ: Thank you, Commissioners.

16 Manuel Alvarez, Southern California Edison.

17 I guess item number four, the right of
18 eminent domain, I guess you have to deal with the
19 issue that's in the write-up by the staff before
20 you can address this issue significantly.

21 As you know, SB 110 was passed, which
22 basically removes the need determination of a
23 facility. And yet, the question of eminent domain
24 raises the question of the public interest and
25 necessity, asks for some sense of what degree of

1 public interest benefits exist in the projects
2 that are under the Commission's jurisdiction, and
3 then basically requires a determination of public
4 necessity and convenience -- or convenience and
5 necessity, excuse me, for that particular project.
6 Yet in this write-up there is no standard by which
7 the Commission will, in fact, implement those
8 requirements that are stated here.

9 So moving to the question and the staff
10 recommending the power of eminent domain without
11 addressing those fundamental questions of what the
12 public necessity and convenience, what the degree
13 of public benefit the staff will require, and in
14 fact what's the overall public interest, is --
15 this issue is -- is not appropriate, and the
16 Commission should not receive this particular
17 authority.

18 PRESIDING MEMBER LAURIE: Do you believe
19 the utilities should retain the right for eminent
20 domain over transmission?

21 MR. ALVAREZ: Well, transmission, as I
22 understand it, is not under the jurisdiction of
23 the Energy Commission. It is still a regulated
24 function --

25 PRESIDING MEMBER LAURIE: I -- I

1 understand that. But that wasn't my question. My
2 question was, do you believe the utilities should
3 retain the right for the placement of new
4 transmission services?

5 MR. ALVAREZ: Transmission is still a
6 regulated function under the AB 1890, and the
7 utilities should retain that authority for eminent
8 domain under transmission facilities, as long as
9 it remains a regulated function, under the
10 auspices of the Public Utilities Commission, who
11 will make -- who makes that determination that
12 there is public convenience and necessity on the
13 transmission facility.

14 The transmission facilities that you're
15 speaking on the siting are basically from the
16 power plant to the first point of interconnection,
17 which are part of the merchant function that
18 exists. They are not part of the entire regulated
19 distribution function. They're integrated, and
20 you need to address that and the interconnection
21 requirements, but they're a separate entity under
22 the jurisdiction and authority that you have for
23 power plant sitings and related facilities. They
24 are part of a separate commercial venture.

25 COMMISSIONER ROHY: May I try -- may I

1 try to --

2 PRESIDING MEMBER LAURIE: Yes.

3 COMMISSIONER ROHY: -- another tack on
4 the question.

5 Let's take the transmission off the
6 table for a moment. Do you believe that any body,
7 and I'm saying body in an agency or company or
8 regulated utility, should have eminent domain
9 capabilities for power plant sites and related
10 linear facilities?

11 PRESIDING MEMBER LAURIE: Regardless of
12 -- not stating what the standard is.

13 COMMISSIONER ROHY: Correct.

14 MR. ALVAREZ: Without stating the
15 standards?

16 COMMISSIONER ROHY: Let's leave the
17 standards off it, just for a minute. Should this
18 capability exist at all for any -- any
19 organization?

20 MR. ALVAREZ: Under -- under the
21 restructuring proposal as it exists in California
22 today, the merchant facilities are in fact
23 independent commercial ventures. And the question
24 becomes do you find that that commercial venture
25 is, in fact, in the public interest. And you have

1 to reach to the question of what that public
2 interest is before you can make that
3 determination. So you have to go back to the --
4 to the historical origins of the public necessity
5 and convenience requirements to say that
6 particular power plant, or that particular
7 facility that you're addressing, has some public
8 necessity and public benefits.

9 Without knowing what those are, you
10 cannot reach the question of eminent domain. You
11 have to resolve that matter before you -- before
12 you can get there.

13 COMMISSIONER ROHY: Did you go to law
14 school recently?

15 MR. ALVAREZ: No, I didn't.

16 (Laughter.)

17 MR. ALVAREZ: This is still a matter of
18 policy. I'm not a lawyer.

19 PRESIDING MEMBER LAURIE: Just --
20 question, Manuel. Do you know, let's say you were
21 building a 100 unit subdivision. And you were
22 granted authority by the local agency to build
23 your subdivision, but, by golly, you know, you did
24 not negotiate access for your sewer lines before
25 project approval.

1 Do you believe that governmental
2 agencies should then, in order to serve your
3 project, utilize the power of eminent domain for
4 either gas lines, sewer lines, cable lines, or
5 even new road access?

6 MR. ALVAREZ: I guess in that situation,
7 I guess it would be the flaw of the project to not
8 be aware of either sewer or water or facilities
9 that -- that are necessary, and received approval
10 without those particular items being identified
11 that in fact require eminent domain. Because it's
12 the interface between the private transaction and
13 the public need that, in fact, the eminent domain
14 is being exercised, not by the developer, but by
15 in fact the water service or the utility that is
16 providing that particular service.

17 If that was an oversight of the
18 developer, then the developer should never have
19 received that permit in the first place.

20 To the extent that there is a finding at
21 that particular point, that finding will still
22 have to come forward and say yes, there is a
23 public necessity for that water, or that other
24 utility service, to in fact encroach on other
25 private developers. And that's the finding that

1 you have to make in that particular case. And
2 that's, in fact --

3 PRESIDING MEMBER LAURIE: Okay. But
4 Commissioner Rohy's question was, regardless of
5 that finding, let's -- let's anticipate that we're
6 able to develop standards and criteria that
7 commands a presentation of evidence that would
8 support those public benefit findings.

9 The ultimate question is, given that,
10 should there be a power of eminent domain
11 available?

12 MR. ALVAREZ: If you could cross a
13 threshold of public benefits and public interest,
14 then you, in fact, taking a facility, in effect
15 reverting it back to a regulated environment in
16 which it came from, and you are saying that that
17 particular facility has a public convenience and
18 necessity requirement, and in fact should remain
19 regulated in some capacity.

20 PRESIDING MEMBER LAURIE: Okay.

21 COMMISSIONER ROHY: I interpret that
22 answer as you don't believe anybody should have
23 that eminent domain right for a merchant facility.
24 Is my interpretation correct?

25 MR. ALVAREZ: Your interpretation is

1 correct.

2 COMMISSIONER ROHY: Okay. Thank you.

3 MS. EDSON: You know, I wasn't going to
4 say very much about this until I heard Mr. Alvarez
5 speak.

6 IEP agrees generally with those
7 comments. Eminent domain authority is an
8 extraordinary power of government to take private
9 property. And that's a power that we think needs
10 to be conferred with great care.

11 Having said that, California's electric
12 generation is, generally speaking, about Korean
13 War vintage. Replacing that generation with new
14 clean power plants at existing sites and some new
15 merchant sites is essential to maintain reliable
16 service, improve environmental quality, and lower
17 consumer costs in the State of California.

18 And if the State of California finds
19 itself in a situation where projects being
20 permitted by this agency cannot be constructed
21 because developer X providing a project which
22 meets your threshold for public convenience and
23 necessity cannot get a transmission right-of-way
24 between Point A and Point B to interconnect with
25 the system, I think that it's the state's

1 obligation under those circumstances to make sure
2 that that line can, in fact, be put in place.

3 Whether Mr. Alvarez will admit this or
4 not, California's private -- regulated utilities
5 are private for profit corporations. And they
6 have an obligation under federal law to
7 interconnect these merchant facilities, both with
8 regard to electric and gas services.

9 So IEP, you know, approaches this issue
10 very reluctantly. We -- we -- recent -- we're now
11 starting to see some projects being permitted in
12 California, and those projects are now going into
13 construction phases. And eminent domain -- I
14 shouldn't say eminent domain, rights-of-way issues
15 are beginning to arise. Whether they will arise
16 to the threshold where we want to come forward and
17 support this, I can't tell you right now. There
18 needs to be, I think, greater deliberation within
19 IEP to decide how specifically they want to
20 approach this issue.

21 But we are coming, I think it's fair to
22 say, coming to the view that we -- we can't ignore
23 this issue any longer. We're going to have to
24 come to grips with it, and recognize that there
25 are circumstances when it may indeed be

1 appropriate.

2 COMMISSIONER ROHY: May I -- excuse me.
3 Just a clarification. I -- I interpret things, so
4 I want to make sure my interpretations are
5 correct.

6 I heard you say that you might -- you
7 believe that eminent domain might be appropriate
8 for the transmission or linear facilities. Is
9 that correct?

10 MS. EDSON: Well, that's -- you know, we
11 need to -- to confront whether that should go to
12 site control as well. I think in the -- in the
13 merchant environment, site control is a somewhat
14 different issue.

15 COMMISSIONER ROHY: That's what I was
16 trying to get at. Is that a different issue --

17 MS. EDSON: Right. And I -- but I don't
18 -- I don't want to speak definitively on that,
19 without further consultation with my --

20 COMMISSIONER ROHY: But your primary
21 comments were to the linear facilities. Thank
22 you.

23 PRESIDING MEMBER LAURIE: Mr. Harris and
24 Mr. Williams, and Mr. Burk.

25 MR. HARRIS: Well, what -- I want to

1 start my very brief comments by apologizing for
2 being a lawyer.

3 (Laughter.)

4 MR. HARRIS: It seems to be a theme
5 today.

6 I'm speaking on behalf of CalPine on
7 this particular issue, because they have a great
8 interest in this. And we're in agreement with IEP
9 that this is such a large issue that it probably
10 ought to be separated out of the more general
11 question of the siting regulations that you're
12 looking at today.

13 Having said that, although we would like
14 it to be separated out, we think it ought to
15 proceed in parallel, and not sequentially. We
16 heard at least one agency representative kind of
17 deftly tap dance through the question of turf, and
18 we know that that is a big issue. And that --
19 that may become a bigger issue. I don't know if
20 you want this siting initiative to get rolled up
21 into that larger issue. I think maybe it would be
22 wise to separate them for that -- for that very
23 reason.

24 Having said that, though, I think that
25 this eminent domain power is -- ought to be

1 exercised only in extremely rare cases. But it's
2 an important point for this developing market. If
3 you have a power plant and you can't get your
4 power to market, you are not at market. You are
5 not a power plant. You are a license.

6 There's a public interest in licensing
7 power plants, and a public interest in getting
8 those power plants onto the grid, and I'd ask you
9 to take official notice of your own heat storm
10 report. That is probably the best argument I
11 think we can make for the public interest in
12 having power plants built and actually connected
13 to the grid.

14 And so I would ask that you take that
15 into consideration, that there is, indeed, a
16 public interest here, as well.

17 PRESIDING MEMBER LAURIE: I think our
18 heat storm report is still in workshop phase, is
19 it not, Mr. Vice Chairman?

20 MR. HARRIS: It's a very good draft,
21 though.

22 PRESIDING MEMBER LAURIE: Thank you.

23 MR. HARRIS: Thank you.

24 MR. WILLIAMS: I will try to be very
25 brief, but I think I have a key point.

1 First, yes, there should be eminent
2 domain, but yes, for regulated public agencies.

3 No, there should not be eminent domain
4 for private companies. Anybody who sells a
5 product, an automobile, a computer, a fly swatter,
6 you name it. If they're a private for profit
7 company, they're providing a public benefit. So
8 you cannot use the test of public benefit as the
9 sole criteria for eminent domain.

10 I think if you have to choose between
11 this experiment in deregulation and eminent
12 domain, it's not a foregone conclusion that this
13 free power market is going to work. Having spent
14 my life's work in the power business, I see a lot
15 of abuses that I wouldn't have expected. How do
16 we regulate the payout period of a plant? Things
17 like that.

18 So I don't think it's by any means a
19 foregone conclusion that deregulation of utilities
20 is going to work. And it may be little pitfalls
21 like eminent domain that keep it from happening.

22 But to reiterate, I think like for
23 railroads and transmission lines, you do need
24 eminent domain. But there are enough sites along
25 existing transmission lines and gas lines for 100

1 years of power plants.

2 PRESIDING MEMBER LAURIE: Thank you.

3 Mr. Burk. Sir, you're next. Mr. Burk,
4 please.

5 MR. BURK: Jerome Burk again.

6 Apparently we have a lot of interest in
7 this subject.

8 Yes, eminent domain probably in -- in
9 very rare instances is something that would be in
10 the public interest and necessity. But until you
11 exercise that, or even give yourself the authority
12 to do that, I think you should be very specific
13 about exactly what the public interest and
14 necessity is defined as.

15 It's -- I will define it differently
16 than you will. These people here and these people
17 here will define it differently. So perhaps we
18 should add to that definition the concept that if
19 only this project could -- would be in not only
20 the public interest and necessity, but it was the
21 only project, or the only means to solve that
22 problem, then I -- I'd hate to say I'd support it,
23 because I think the concept is absolutely
24 abhorrent, but it would make more sense to me.

25 One other point very quickly. Or two

1 other points. One is that the problem with the
2 lineal facilities that the Commissioner brought up
3 might be best addressed as part of the AFC
4 process, instead of simply the site. And we might
5 get by some of these problems. And again, I guess
6 in another part of this I would -- I would support
7 the Commission taking over that responsibility.

8 Of course, that would make the AFC
9 process necessary to be extended somewhat. You
10 can't hardly do it in a year now.

11 PRESIDING MEMBER LAURIE: Not -- not
12 necessarily, sir. I would anticipate requests for
13 eminent domain may arise subsequent to the
14 issuance of a license.

15 MR. BURK: Probably. You have more
16 experience in that than I do. But I would -- I
17 would think that you could solve some of these
18 problems by bringing that -- the lineal facilities
19 into the AFC process and extending the AFC process
20 to reflect that.

21 And finally, I'm a little confused about
22 the staff's -- and I'm going back a little here,
23 but it's germane to this. And that is, they
24 argued in their first recommendation that the
25 reason to get rid of an NOI was that the --

1 correct me if I'm wrong here -- one of the reasons
2 was that it was -- regulated utilities had this
3 eminent domain authority, and therefore they could
4 -- they had an advantage over the merchant plants.
5 Is that correct?

6 MR. O'BRIEN: Yes, that's one of the
7 reasons we used on the NOI.

8 MR. BURK: Right. But I would suggest
9 to you that because of the -- the function of the
10 Energy Commission, which is to site power plants,
11 given the Energy Commission eminent domain is the
12 same as giving it to these merchant power plants.
13 And therefore I think the argument should be
14 withdrawn for recommendation number one.

15 Thank you.

16 PRESIDING MEMBER LAURIE: Thank you.

17 Commissioner Rohy.

18 COMMISSIONER ROHY: Thank you, Mr. Burk.
19 I just want to comment on some of the things that
20 I say are not necessarily positions, but to try to
21 draw out your opinions.

22 MR. BURK: I understand.

23 COMMISSIONER ROHY: Thank you.

24 MR. GARBETT: William Garbett, speaking
25 on behalf of the public.

1 Once again, we want to go and see how
2 far this eminent domain can trickle down. If
3 you're subsidizing me because I have a solar panel
4 on my roof and I sell my surplus power to the
5 grid, do you need to take down my neighbor's pine
6 tree that shades it? That's the question.

7 But that isn't the issue, because you
8 haven't had a problem. The eminent domain should
9 not exist prior to the application being filed.
10 Once the application is filed, you have to
11 consider it on its merits. You can't give it
12 additional power.

13 For instance, the CEC is the legislative
14 authorized agency. You do not have powers of
15 eminent domain that extend from the State
16 Constitution.

17 Thank you.

18 PRESIDING MEMBER LAURIE: Thank you,
19 sir.

20 Any other comments on the issue?

21 PUBLIC ADVISER MENDONCA: Roberta
22 Mendonca, the Public Adviser. I'll make these
23 quickly, as he's coming to the podium.

24 On question four, the eminent domain on
25 behalf of the Commission for a licensee's project

1 that's shown to be in the public interest, there
2 were seven no's.

3 PRESIDING MEMBER LAURIE: Thank you.

4 MR. MURPHY: Hello. My name is Mike
5 Murphy. I live in San Jose. And I'm glad to hear
6 that the first hour I missed stressed public
7 input, because I think any reduction of public
8 input or shrinking of the intervenors'
9 participation would be violation of the public
10 trust. So I'm glad it was talked about
11 thoroughly.

12 I was busy out dropping flyers, inviting
13 people to your meeting on the 16th, this coming
14 Thursday.

15 On eminent domain, on behalf of any
16 licensee whose project is shown to be in the
17 public interest and necessity, I don't see how
18 that's going to be defined, who will define it,
19 and who will then exercise the decision over if it
20 meets it. I agree with a lot of the speakers that
21 that authority is not necessary for the CEC. The
22 local city councils and board of supervisors can
23 also -- already exercise it where necessary. And
24 that's where I think it should stay.

25 Replacing sites and upgrading sites is

1 evidently satisfactory. I heard a previous
2 speaker talking about that. And that should be
3 encouraged. New sites necessitating exercising of
4 eminent domain, I don't see that it's necessary.
5 There must be other sites possible. Existing
6 sites are all over the place. Like someone said,
7 they're vintage, and they need to be focused on
8 upgrading and increase the power there.

9 And to answer the lawyer in the group,
10 he said something about a power plant without any
11 connections. I hope they don't apply to build a
12 power plant that doesn't have connections already
13 in the plans.

14 Thank you very much.

15 PRESIDING MEMBER LAURIE: Thank you,
16 sir.

17 Anymore comments on eminent domain?

18 Ladies and gentlemen, we'll take a break
19 until 1:30. And when we return, there's a
20 gentleman here that has a 3:00 o'clock flight.
21 We'll take him, then we'll also discuss what we're
22 going to do about the rest of the agenda and how
23 we're going to get through this.

24 (Thereupon, the lunch break was taken.)

25

1 AFTERNOON SESSION

2 PRESIDING MEMBER LAURIE: Ladies and
3 gentlemen, first let me note that as far as our
4 agenda goes, to the extent that we do not complete
5 the agenda today, and I have a high degree of
6 confidence that we will not, we will continue this
7 meeting to 0900 tomorrow morning, for that
8 purpose.

9 It should also be noted that there will
10 be additional opportunities to comment. There
11 will be a second workshop, and there will be a
12 Commission hearing before any final action is
13 taken.

14 COMMISSIONER ROHY: Commissioner, may I
15 make a short comment?

16 PRESIDING MEMBER LAURIE: Dr. Rohy.

17 COMMISSIONER ROHY: I have been advised
18 that we have people listening on real audio, and
19 we're very pleased they're out there listening to
20 us.

21 PRESIDING MEMBER LAURIE: Thank you,
22 sir.

23 Yes, sir.

24 MR. WILLIAMS: Thank you. I'm Robert
25 Williams. I respectfully request that if at all

1 possible, you turn to the last page of the
2 questionnaires. Many of us intervenors have come
3 here to make comments on the importance of public
4 participation, and issues such as that. I, for
5 one, will not be able to attend the extended
6 conference tomorrow, so I would appreciate it if
7 you would consider moving to the intervenor
8 comments section of the questionnaire, and then
9 dealing with the more lawyerly issues tomorrow.

10 Thank you.

11 PRESIDING MEMBER LAURIE: Thank you. Do
12 you have any difficulty with that, Dr. Rohy?

13 That's certainly acceptable to the -- to
14 the committee.

15 Mr. O'Brien, what particular numbers
16 deal with intervention status and intervention
17 process?

18 MR. O'BRIEN: Commissioner Laurie, I'd
19 say that if you look under suggested revisions to
20 the siting regulations, number one, electronic
21 filing; number two, filing to be an intervenor,
22 would fall under that. Perhaps number five,
23 noticing. Number seven, obtaining information. I
24 would say all of those might be of interest to the
25 intervenors, and obviously if there are other

1 items that are of interest to them, they can so
2 inform the committee.

3 PRESIDING MEMBER LAURIE: Does anybody
4 in the audience have objection to proceeding as
5 requested?

6 Sir.

7 MR. WILLIAMS: Could you also look at
8 the supplemental sheets to the fixed matrix.

9 COMMISSIONER ROHY: The question was
10 could you look at the supplemental sheets to the
11 fixed matrix. Is that correct?

12 MR. WILLIAMS: Yes. That is what I had
13 in mind, as well.

14 Robert Williams, again. And that is
15 what I had in mind. Some of the comments we had
16 regarding public notices, regarding workshops and
17 hearings, public participation opportunities,
18 we've specifically addressed in the section that
19 was blank. So we'd like perhaps to start there.
20 We can be fairly brief on that.

21 MR. O'BRIEN: Commissioners, it might
22 facilitate moving through the -- the agenda just
23 to then allow individuals to state what particular
24 issues are of interest to them, and we can work
25 through on that in maybe the next hour or so. As

1 opposed to us trying to, you know, guess what they
2 might be.

3 PRESIDING MEMBER LAURIE: Okay. Well,
4 we've heard from -- well, from basically the same
5 individuals on every one of the items, so I have
6 to believe that the same individuals, if given an
7 opportunity, would continue to want to comment on
8 every one of the items.

9 What I'm hearing, however, is a request
10 to address those issues relating to intervention
11 status and intervention process. I think for the
12 most part those are referenced in the siting regs.

13 So given that, we will jump out of
14 order, and we will go to the siting regs, and I
15 will call them in order. And Mr. O'Brien, you can
16 tell me if it be your recommendation to -- well,
17 let's go through the -- let's look at the siting
18 regulations for a moment. And we can lump all of
19 these in one category, as far as I'm concerned.
20 Give the folks an opportunity to comment generally
21 or specifically as to each.

22 Electronic filing, we'll discuss.
23 Filing to be an intervenor, we'll discuss.
24 Noticing, we'll discuss. How about number seven?
25 that could --

1 MR. O'BRIEN: Yes, I would think that
2 would be of particular interest to intervenors, in
3 terms of the date by which all requests for
4 obtaining information in a siting case has to be
5 submitted. And perhaps number 19, data adequacy
6 regulations.

7 MR. THERKELSEN: Commissioner, this is
8 Bob Therkelsen speaking.

9 I think the other item it would be
10 interesting to get the public's view on is filing
11 fees. If they have any perspectives on that.

12 PRESIDING MEMBER LAURIE: Okay.

13 Okay, ladies and gentlemen, what we're
14 going to do for this next phase is I will call on
15 individuals and you may -- please indicate which
16 items you intend to discuss. You can lump them
17 all in to a five or ten minute statement, if
18 that's what you want to do, because they are all
19 somewhat combined. I would not anticipate that
20 all of you have comments on the six or seven items
21 that we brought up.

22 Feel free to comment on other areas that
23 are a challenge to the intervention process, even
24 if we have not mentioned it. So we'll proceed in
25 a much more informal fashion. But I'm going to

1 ask you to limit your comments to no more than ten
2 minutes, so we can get through the day. And then
3 as time may permit, we will allow additional
4 testimony. Okay?

5 Any questions on that?

6 Okay. Mr. Williams, would you like to
7 start?

8 MR. WILLIAMS: It's always fun to be
9 able to counterpunch rather than punch. I'm happy
10 to, sir.

11 Yes, I'm Robert Williams. Let me direct
12 your attention to page three of my letter. Let me
13 comment briefly on the first page.

14 Page three, electronic filing. I think
15 the first communication I had with Roberta
16 Mendonca was to request electronic filing. I
17 think it will be very workable for all parties. I
18 think if there is any objection, it's going to be
19 over the complexities of file integrity. And I
20 think there is at least one file structure, PDF,
21 the file structure for acrobat, that keeps people
22 from changing it.

23 So I think that'll work very well. I
24 think there should be a two year phase-in period
25 if there are not major problems, that an

1 electronic filing should be the way to go.

2 I don't -- with respect to a deadline
3 for filing and the appeal of committee orders,
4 items two and three, I see no way that we can set
5 an arbitrary cutoff date. It depends on when and
6 the order it becomes evident. And it may be in
7 the eleventh month of the process, or it may be a
8 month after it's made.

9 I, in my notes, I have --

10 PRESIDING MEMBER LAURIE: Mr. Williams,
11 let me ask.

12 MR. WILLIAMS: Yes, sir.

13 PRESIDING MEMBER LAURIE: Do you have
14 the understanding that during the course of any
15 case proceeding, that a member of the public can
16 comment for the record and have those comments be
17 deemed part of the record, even though they're not
18 of intervention status. Do you have that
19 understanding?

20 MR. WILLIAMS: Yes, I do, sir. But I
21 believe that the applicant has no obligation
22 whatsoever to listen to them. That record can be
23 used as a doorstop.

24 PRESIDING MEMBER LAURIE: That -- that
25 is an incorrect assumption.

1 MR. WILLIAMS: Is that right? Okay.

2 Well, one of the biggest advantages
3 nuclear power took of regulatory law was in
4 definitions. One of the classics is that nuclear
5 fuel was defined as nuclear waste. And that
6 permitted a whole bunch of government subsidies to
7 apply to nuclear fuel.

8 So I was not in a position to locate
9 precisely what definitions were being talked about
10 with respect to the letter of intent, and the
11 option contract. But there are clearly major
12 problems with pollution credits and with land
13 options. So I reserve my broadside on that one.

14 Let me just grab my --

15 I don't have a clear idea, with respect
16 to number five, of how to deal with noticing
17 provisions and ex parte discussions. The text in
18 my letter, page three and four, deals, and I think
19 particularly page four of the cover letter,
20 proposed the idea of monthly status meetings.

21 I don't know how to resolve it. I saw
22 applicants regularly meet in private with the NRC.
23 I see applicants regularly meet in private with
24 the San Jose Zoning Commission. I don't have
25 enough familiarity here to know if they meet in

1 private with the staff, but I suspect they do.

2 Let me take you briefly -- and I
3 apologize, I thought my voice was getting better
4 --

5 PRESIDING MEMBER LAURIE: By the way, it
6 is -- absent a special ordinance that San Jose may
7 have to the contrary, rules regarding the local
8 process do not inhibit or prohibit any individual,
9 whether they're a neighbor or an applicant, from
10 meeting with staff or meeting with a member of the
11 city council or board of supervisors, as the case
12 may be.

13 MR. WILLIAMS: But my understanding is
14 I'm prohibited as a formal intervenor from meeting
15 with the CEC staff. Is that correct?

16 PRESIDING MEMBER LAURIE: Well, I don't
17 know. There -- that's the challenge to our ex
18 parte rules.

19 MR. WILLIAMS: Yeah. That doesn't stop
20 CalPine, in my opinion, but --

21 PRESIDING MEMBER LAURIE: No. That --

22 MR. WILLIAMS: -- it seems to stop me.

23 PRESIDING MEMBER LAURIE: No, that --
24 that's not correct.

25 MR. THERKELSEN: This is Bob Therkelsen

1 speaking. Let me clarify.

2 The staff does not meet with any party,
3 whether it's the applicant or an intervenor, on a
4 substantive issue during an active case. So if
5 you're an intervenor on a certain case, we would
6 not be meeting with you, nor would we be meeting
7 with the applicant on that specific case, unless
8 it was in a noticed forum.

9 MR. WILLIAMS: But then I can come to
10 talk to you about Delta and Moss Landing, and it
11 would be perfectly okay?

12 MR. THERKELSEN: If you are a member of
13 the public and you are not an intervenor on that
14 case, that would be correct.

15 MR. WILLIAMS: Okay. Thank you.

16 Well, I think I'd like to use my last
17 five minutes just to highlight a few of the points
18 in my overview of the regulation.

19 I have not had a chance to study the
20 Cal-ISO practices, but I'm a student of power
21 plant economics for 30 years. I helped General
22 Electric design reactors. The driving force of
23 reactor design was plant economics.

24 So I smell a rat when suddenly, out of
25 the -- there are 25 power companies or power

1 plants bid. There is something that is awarding
2 excessive profits in the -- in the Cal power plant
3 siting, and I would urge that you -- that we all
4 study together.

5 Let me reiterate that if you treat
6 prices as proprietary, the only people who will be
7 kept in the dark are you and the public. Every
8 power company knows every other power company's
9 prices. If you have any doubt, you can go get
10 bids for identical equipment from the same
11 vendors, and you can come within a gnat's eyebrow
12 of what the thing is costing them. So this --
13 this myth of proprietary secrecy is just that, a
14 myth.

15 Finally, I'd like to reinforce the
16 benefit of the public advocate's office. For
17 years, there has been the historic battle, how
18 will you provide public support to intervenors. I
19 happen to think the public advocate's office is a
20 reasonable compromise between writing me a check
21 and telling me to go to hell. The public
22 advocate's office can provide reasonable
23 assistance, but two people cannot provide
24 reasonable assistance in an environment where
25 there are 25 power plants. So there seems to be a

1 need for some reasonable staffing ratio.

2 I think again that even if I were free
3 to contact the staff and we made -- the CEC staff,
4 and we made that known to all the intervenors, the
5 CEC staff would then spend all their time in
6 talking to intervenors or, alternatively, not
7 returning phone calls. So some type of structured
8 meeting on the technical status of projects needs
9 to be held. It shouldn't be a I promised you the
10 XYZ report a month from now, instead of this
11 month. It should be the technical details of
12 what's in the XYZ report.

13 PRESIDING MEMBER LAURIE: Okay. Well,
14 currently if there's a request for a meeting, the
15 meeting can be held, but it has to be a noticed
16 public meeting. It --

17 MR. WILLIAMS: Well, I think these
18 should be noticed, but they should be regularly
19 noticed. Particularly on -- if you're on the so-
20 called 12 month schedule.

21 And I'd finally like to reiterate, you
22 know, everybody falls in love with their own
23 invention, and this is, while not my -- totally my
24 own invention, the idea of two timeframes, the
25 idea of standard and non-standard plants, the idea

1 of different criteria when the air is bad and when
2 the air is good, in other words the EPA non-
3 attainment area versus the well, air's okay here,
4 to me suggests a broad matrix that could
5 categorize the siting process and determine
6 whether you're on a one year or a three year
7 schedule.

8 That little box would have nine boxes in
9 it. Maybe there's different month schedules in
10 every box. But I see a way of structuring it, and
11 I despair of holding notices. You'll get promises
12 from applicants that say well, I'll have this next
13 month. And the next month's submittal, they put
14 satisfactory. So two months later, you'll have
15 submittals that again try to remedy a defect.

16 So I think a structured process, with
17 certain known criteria, if you're not a standard
18 plant, a preapproved banked site, don't come in
19 and ask for a 12 month schedule. It should be
20 pretty simple.

21 I've taken my ten minutes.

22 PRESIDING MEMBER LAURIE: Yeah. Thank
23 you, Mr. Williams.

24 Let me ask you a question on --

25 MR. WILLIAMS: Sure.

1 PRESIDING MEMBER LAURIE: -- on the ex
2 parte rule again.

3 Let's assume for a moment that you have
4 made a decision to be a formal intervenor. And
5 first of all, on the earlier question of what
6 rights do you have as a member of the public who's
7 not an intervenor, but may comment, we have to do
8 a better job of letting folks understand what
9 those rights are. Because clearly, the rule is
10 that not only do you have a right to comment, but
11 your comments are part of the record, and the
12 decision making -- the decision makers consider
13 the record.

14 So one does not need to be a formal
15 intervenor to have their statements made a part of
16 the record, which are in turn considered. Point
17 being, if you are an intervenor, then you are
18 restricted from contacting staff, because of the
19 ex parte rule.

20 Is that your preference, or would you
21 want to make contact with staff easier?

22 MR. WILLIAMS: Well, I have a detailed
23 proposal on page four. But first, let me direct
24 your attention to page seven. I believe this is
25 in the -- what the consultant wrote.

1 Intervenor comments, along with those of
2 the general public, must be responded to in
3 written form by the independent consultant, but
4 following the issuance of the Presiding Member's
5 decision. Now, maybe that's a typo. But I read
6 that to mean the consultant will tell me why you
7 didn't listen to my suggestions, after you've made
8 up your mind. That doesn't seem like very
9 rewarding feedback.

10 Do you see where I'm reading from? Page
11 seven, at the top here. Intervenor comments.

12 So I have participated in a lot of
13 public meetings on nuclear regulation, nuclear
14 waste regulation in particular. And I'm aware
15 that these things go very slowly, and the mill
16 grinds exceedingly fine. And to some extent, I'm
17 afraid that paragraph captures what often happens.
18 We will tell you why your comments were not
19 listened to after the comment period is over.

20 PRESIDING MEMBER LAURIE: Thank you,
21 sir. Comments are appreciated.

22 Next.

23 MS. HARVEY: Eva Harvey. In the
24 interest of time we're -- a few things of
25 overwhelming importance to us.

1 Under suggested revisions to the siting
2 regulations, number five, noticing provisions.
3 Clarify that staff is not precluded from attending
4 unnoticed meetings sponsored by other agencies.
5 Our answer to that is yes, we would like that to
6 be put in.

7 Clarify that no party is prohibited from
8 attending meetings. And all proceedings are
9 public and properly noticed, per the requirements
10 of the California Environmental Quality Act, and
11 the Ralph M. Brown Act.

12 For an example, the San Jose Planning
13 Department appears to hold many private meetings
14 with applicants, excluding everybody else. The
15 legal basis for this is very unclear.

16 Number 18, functional equivalency.
17 Staff believes Commission is functionally
18 equivalent to California Environmental Quality
19 Act.

20 We say no. It is inconceivable, as the
21 CEC now operates. California Environmental
22 Quality Act mandates an independent analysis. The
23 Commission staff is forced by schedule and
24 paperwork requirements to become an applicant.
25 CEC are mandated to process an application and

1 develop conditions to certify a power project.
2 This then puts the Commission in the role of
3 applicant, and not an impartial third party.

4 Intervenors and interested parties
5 cannot submit their positions and be able to get
6 an impartial analysis. CEC staff use the
7 experimental deregulated regime as a means to
8 avoid the obligations under the California
9 Environmental Quality Act.

10 The solution is to require that
11 independent third party consultants be used to the
12 CEQA portion; in addition, affected agencies be
13 required to conduct their own CEQA analysis with
14 the Commission as lead agency. The process needs
15 to be conducted under the CEQA guidelines, so that
16 the public has the opportunity to fully understand
17 how it works.

18 And under intervenor comments, we would
19 like to get these comments into the record.
20 Intervenor's comments, along with those of the
21 general public, must be responded to in written
22 form by the independent consultant following the
23 issuance of the Presiding Member's decision.

24 One. Public notices regarding
25 announcement of the power plant siting case.

1 There is little public notice. CEQA requires
2 notice to affected property owners. Each power
3 project has regional significance, and mass public
4 notice should be given. Public notice should, at
5 a minimum, meet the requirements of the Ralph M.
6 Brown Act.

7 Two. Public notices regarding workshops
8 and hearings, the same as one.

9 Three. Public participation
10 opportunities. Any person, agency, or entity
11 should be allowed to intervene, appear and give
12 testimony, submit documents or evidence, and make
13 a record either pro or con on any issue at any
14 hearing, until the Presiding Member's decision is
15 issued.

16 Four. Public Adviser's Office should
17 always be available to the public. Part of the
18 fees paid by the applicant should go to support
19 this activity. As the Commission's number of
20 projects under review increases, additional
21 staffing for this office should also increase. It
22 appears there is a current need for an additional
23 attorney in this office at this time.

24 Five. Commission staff. Staff should
25 be available to the public, just like a planning

1 staff in a city or county. The CEQA analysis
2 should be contracted out to independent unbiased
3 consultants, with Commission staff acting as lead
4 agency, only processing the actual applications.
5 Advocacy by the staff for a particular project
6 should serve as grounds for removal from the
7 project. Staff's unbiased oversight in the review
8 process is paramount.

9 Six. Analysis of impacts of alternative
10 power sources for merchant plants. Federal law
11 requires merchant plants to identify a backup
12 power source in the case of emergency or
13 unavailable natural gas supplies. In a certain
14 power project case, this was identified to the
15 federal government as coal. Alternative sources
16 impact analysis should be identified in the
17 Commission's review process.

18 Thank you.

19 PRESIDING MEMBER LAURIE: Thank you.

20 MS. HARVEY: I would just like to ask
21 you, parts of this that I have not read into the
22 record, this still becomes part of the record, is
23 my understanding. Correct?

24 PRESIDING MEMBER LAURIE: As long as
25 it's part of your written submittal.

1 MS. HARVEY: Thank you.

2 PRESIDING MEMBER LAURIE: Yes, ma'am.

3 MR. BURK: Good afternoon. Jerome Burk,
4 again.

5 I guess I would like to reiterate those
6 comments just made, on several issues,
7 particularly involving the functional equivalent.

8 But I'm up here, quite frankly, to --
9 I'm a little confused. And I think in proposal
10 number two, and I might add proposal number one,
11 the electronic filing's a fantastic idea. As long
12 as those of us that are still working in the first
13 half of the 19th Century could get paper copies.

14 Number two, suggested revision number
15 two to the siting regulations. I would propose
16 that petition to intervene be granted up to and
17 including the day of the first evidentiary
18 hearing. Since intervenors are the only effective
19 participants allowed to call witnesses, present
20 evidence, and cross examine witnesses, it is
21 important to give wide latitude for any interested
22 party to effectively participate. To do otherwise
23 I believe stacks the deck in favor of the
24 applicant.

25 It was my -- my thought, but this lady

1 back here seemed to have a better one, even.

2 Chairman Laurie, you said that the
3 public's comments were taken into consideration in
4 the record.

5 PRESIDING MEMBER LAURIE: They are --
6 they are legally part of the record.

7 MR. BURK: Yes. And I -- I would not
8 argue with that at all. However, during the
9 Sutter process, we were constantly informed -- the
10 public was constantly informed, that only -- or
11 should I say not only, but witnesses that were
12 sworn, the evidence they presented or the comments
13 they presented held more weight than those with
14 public comment. And as such -- and that was from
15 members of the Commission. As such, I would think
16 that anyone could intervene at any time to call
17 witnesses and cross examine witnesses. Perhaps to
18 cross examine is in some cases more important than
19 just presenting.

20 That's all I have. Thank you.

21 PRESIDING MEMBER LAURIE: Thank you,
22 sir.

23 Mr. Joseph.

24 MR. JOSEPH: Thank you, Commissioners.

25 I would've preferred to have followed Karen, but I

1 think I'll go ahead and let her take the
2 counterpunch at me.

3 (Laughter.)

4 MR. JOSEPH: I'm going to comment on
5 several of these items, and I'll just do them in
6 order.

7 First of all, on electronic filing. I
8 think that's absolutely fine; however, with one
9 caveat. There are portions of the AFC, for
10 example, detailed maps and -- and visual impact
11 analyses which are in color, which may be
12 difficult to do electronically, and particularly
13 the color things may require all of us to go out
14 and buy high resolution color printers for us to
15 be able to actually see what it says. So I think
16 there needs to be some consideration given to
17 things which at this point still need to be on
18 paper and available on paper for people.

19 But otherwise, it's a fine idea, and I
20 think we would prefer it.

21 With respect to the noticing provisions.
22 This is a continuation of a discussion we had when
23 you had your workshop last May. And I think the
24 additional perspective that we can have now is
25 based on the number of projects that the

1 Commission has in front of it, if the -- the
2 regulations were changed to allow free and open
3 contact with staff at all times, staff would be
4 overwhelmed, and would necessarily have to limit,
5 you know, the telephone calls they take and the
6 time they spend talking to people. It'd be the
7 only possible way for them to get their work done.

8 And given that situation, I think it's
9 unrealistic to think that you can both preserve
10 effective public participation and have the staff
11 get the work done that they need to get done, if
12 the rule were changed to allow free discussion
13 with the staff at any time.

14 I think the concept of notice to
15 workshops is the only way to preserve public
16 participation. I don't think there's anything
17 wrong with shortening the notice period a bit, 14
18 days is a long time. And particularly, you know,
19 in the initial scoping out of the schedule, one
20 could schedule these things substantially in
21 advance so that people have long notice.

22 The concept of a monthly workshop is not
23 a bad idea. It's something I hadn't thought of
24 before, but it's not a bad idea. One of the
25 things I think we're seeing, which is a little

1 troubling, is in some of the cases there just
2 aren't any workshops being scheduled at all. It's
3 just silence in the case for two, three, four
4 months at a time. And I don't think that really
5 serves either the applicant or public
6 participants. So some sort of regular --
7 regularly scheduled workshops may be the way to
8 go.

9 With respect to obtaining information,
10 item seven. At this point, the way the staff has
11 -- has approached this issue, I don't particularly
12 see that there's something broken which really
13 needs fixing. The staff has suggested, or asked
14 the question whether all requests for information
15 should be submitted by a certain date. It's not
16 my perception that that has been a tremendous
17 problem, a bunch of late data requests coming in,
18 you know, on the eve of hearings. And the times
19 when it has, it's really been from members of the
20 public who haven't been fully involved early on.
21 And I would hate to see, you know, those -- those
22 avenues of inquiry cut off.

23 I think, you know, in the long run it's
24 not in the Commission's interest to make it any
25 more difficult for laypeople to participate in

1 what is clearly a complicated, complex process.

2 I think, if there is a problem with
3 respect to obtaining information, it's with the
4 latest strategy of some of the applicants to
5 object to virtually all data requests as being
6 beyond the scope of the inquiry, and the inquiry
7 being defined as what the staff has decided to
8 ask. And I think that is a problem which -- it
9 may be self-correcting, because I see it coming
10 back to haunt developers when it turns out later
11 that some of those data requests they objected to,
12 later on, the staff decides they really were
13 interested and -- and staff is going to ask them,
14 and now we're late in the process, and we come up
15 under a time constraint.

16 So maybe that problem could be self-
17 correcting, but I think it's something which the
18 Commission needs to keep an eye on, because if
19 it's not self-correcting, you know, it will be a
20 problem. It will effectively extend the amount of
21 time you need to spend in hearings.

22 I'd like to mention one other item which
23 I'm not sure was on this -- this round of issues,
24 but as long as I'm here I'll take a shot, and
25 that's item 11 on the air district DOC, which is

1 also related to the agency coordination item,
2 which would have been the next item had we been
3 taking these in order.

4 Staff suggests shortening the deadline
5 period to 180 days for all agencies to respond.
6 My suspicion is this would be futile. Agencies I
7 think are responding as quickly as they are
8 capable, and their capability is limited by the
9 resources that they have, and the information
10 provided by the applicants. The most common
11 problem with agency response has been applicants
12 not having their offset package ready. And I
13 think it may not be a wise move to set up a
14 deadline which people know is not meetable, and
15 therefore respect for the deadlines tend to
16 disappear. You're better off having realistic
17 deadlines that people think they can actually
18 meet.

19 And lastly, on the question of
20 functional equivalency, I think we entirely agree
21 with the staff that the process is the CEQA
22 function equivalent, and we'd like to see it stay
23 that way. I think we've heard from a number of
24 intervenors that there's some dissatisfaction with
25 the depth of the alternatives analysis that goes

1 on in the AFC process, and if there's a complaint
2 about the functional equivalency that needs to be
3 addressed, perhaps it's by expanding and improving
4 upon the analysis in that process of alternative
5 sites.

6 And that -- that's all the items I have
7 to comment on.

8 PRESIDING MEMBER LAURIE: Okay.
9 Question, sir. On the ex parte discussion. You
10 mentioned that you felt if there was free and open
11 ability to meet with and confer with staff, that
12 staff might be overburdened.

13 Let's assume for a moment that staff is
14 free to say no to an invitation, or to a request
15 for a meeting. Do you see anything inherently
16 wrong with an applicant or any other intervenor of
17 having a private meeting with staff?

18 MR. JOSEPH: If it were possible to
19 assure some sort of equal time, the answer would
20 probably be no. But I don't think that's possible
21 to ensure.

22 It's only natural for the staff who's
23 working on, you know, a particular subject area,
24 to have more desire and interest and need to speak
25 to the applicant to get basic information. And

1 given limited resources and limited time, the
2 natural choice for that staff member to make is to
3 talk to the applicant more, and intervenors less.

4 So I don't -- I don't see how we can
5 keep it balanced.

6 PRESIDING MEMBER LAURIE: In any
7 application for any other development right at the
8 local level, I know of no entity, although some
9 may certainly exist, that prohibits such meetings,
10 not only between the applicant and staff, but
11 between interested neighbors and participants and
12 staff.

13 Are you suggesting that the entirety of
14 that process is fatally flawed because those kinds
15 of communications take place?

16 MR. JOSEPH: Let me take the glass is
17 half full approach. I think the Energy
18 Commission's process is dramatically superior,
19 because of the way it conducts itself.

20 PRESIDING MEMBER LAURIE: So you -- you
21 prefer it.

22 MR. JOSEPH: Yes.

23 PRESIDING MEMBER LAURIE: Okay.

24 Questions? Thank you, sir.

25 MR. JOSEPH: Thanks.

1 MR. ALVAREZ: Manuel Alvarez, Southern
2 California Edison.

3 I'll try to go through these items
4 fairly quickly.

5 Item number one, electronic filing. I
6 don't see any problems with that. In fact, I use
7 it quite extensively now. But then I'm here in
8 town, so I have access to the Commission library,
9 as well, so -- but I think it's the wave of the
10 future, so it's something that we should
11 incorporate.

12 Noticing provisions, I don't have any
13 real problems with that, but I'll let you know
14 that the staff notices of meetings are in fact one
15 of the key indicators that I use, as an outside
16 party, to kind of monitor the project. So to the
17 extent that those notices and meetings are not
18 publicly noticed, you -- I kind of lose that, from
19 an administrative perspective -- I mean, from my
20 perspective. I'm sure there are other ways in
21 which I could follow a particular issue or item
22 that I'm interested in.

23 So right now, it doesn't cause me much
24 problems, but I'm not sure how I would actually
25 track particular items. It's a good tool for me.

1 COMMISSIONER ROHY: I have a question,
2 before you go on, on the noticing.

3 One of our previous speakers I believe
4 said that they would be comfortable with a shorter
5 noticing period. How would you comment on that?

6 MR. ALVAREZ: I mean, I wouldn't feel
7 bad about ten, seven days. I can usually track
8 items, at least on my calendar, in terms of
9 knowing when an item's going to be discussed or an
10 issue's surfacing. The more time you have, you
11 know, the better -- better you are in terms of
12 planning. But not knowing how it would work
13 without having a noticed meeting, and how would
14 one identify an issue or a concern that one wanted
15 to follow, I guess would be the test, once that --
16 if this option was implemented.

17 But I guess I have faith in the
18 Commission that ultimately if an issue surfaces in
19 an unnoticed meeting, at some point you'll be able
20 to extract what information was discussed and
21 debated, and how it led to an ultimate decision.

22 The item eight, the definition of
23 utility. I think this is an item that you have to
24 wrestle with as part of the entire restructuring
25 of the industry that we're confronting today. I

1 know as a regulated entity I am the utility.
2 Whether other entities consider themselves
3 utilities or not, and that's been a debatable
4 question, is something I think the Commission has
5 to wrestle with. And in essence, that defines
6 rules and responsibilities.

7 Item 13, filing fee. I think it's
8 appropriate for the Commission to start
9 considering filing fees from applicants.
10 Currently, as you know, the processing of the
11 application is done as a surcharge on electric
12 rates, and the incidence of that goes to the
13 ratepayer. So the question becomes should that
14 incidence move over to the applicant as part of
15 its business activities.

16 And that's it.

17 PRESIDING MEMBER LAURIE: Thank you,
18 sir.

19 MS. EDSON: Karen Edson, for Independent
20 Energy Producers.

21 I have kind of a process question. Are
22 we covering all of the administrative changes now,
23 or just the ones dealing with intervention?

24 PRESIDING MEMBER LAURIE: No. You know
25 --

1 MS. EDSON: I'm a little confused.

2 PRESIDING MEMBER LAURIE: -- yeah, I --
3 I apologize. It has gotten kind of mixed up. But
4 we do need to accommodate all those who will not
5 be able to be present tomorrow. So we're really
6 concentrating on those issues directly relating to
7 the interests of the intervenors.

8 We will go through -- there will be an
9 additional opportunity at the end of this, and
10 then tomorrow we'll go through the other proposed
11 siting regulatory changes.

12 But for the time being, I'd like to
13 concentrate on the numbers that Terry just earlier
14 referenced.

15 MS. EDSON: Okay.

16 PRESIDING MEMBER LAURIE: To the extent
17 that you can.

18 MR. O'BRIEN: Do you need me to go
19 through that again, Karen?

20 MS. EDSON: Let me just do my best, and
21 hopefully I won't miss something.

22 I want to lead with what I think is the
23 single most important thing you can do, and it's
24 the issue that you've been talking about quite a
25 bit this afternoon. It has to do with noticing of

1 conversations, really, between the staff and
2 parties to a proceeding.

3 As your questions have suggested,
4 Commissioner Laurie, there's no other permitting
5 process that I'm aware of that prohibits that kind
6 of communication from occurring. Not only does it
7 occur at the local level, in my understanding it
8 occurs also at the Air Resources Board, the
9 Coastal Commission, other state permitting
10 agencies. And it's -- that kind of communication
11 is really essential to facilitate the timely
12 processing of these applications.

13 The -- that's not to say that, you know,
14 we're not looking to have the opportunity to go
15 into the back room to cut secret deals. We're
16 looking for the opportunity to have informal
17 communication that will lend itself to clarifying
18 the issues that are pending in these cases, and
19 that in the absence of that communication you end
20 up with a very stilted communication process.

21 PRESIDING MEMBER LAURIE: Okay. Karen,
22 let me interrupt at this point.

23 How would you then distinguish in
24 writing between cutting a CEQA deal and having
25 informal conversations? How would you want to

1 define the ability to do what it is that you
2 really want to do?

3 MS. EDSON: Well, the -- the first, the
4 most important thing to understand is that the
5 staff does not make the decisions. And if -- if
6 an applicant has a communication with the staff,
7 if there is -- if they do come to some consensus
8 on an issue, that has no force and effect in this
9 case until it comes before the Commission, is
10 aired in the public setting, and there is a ruling
11 of one kind or another on the conclusion of that
12 communication.

13 Second, the Commission might want to
14 consider putting forward something like a
15 settlement process. I know at the Public
16 Utilities Commission they have a formal settlement
17 process which is a process that's open to all
18 parties. So that when you are engaged in some --
19 an attempt to resolve the issues associated with a
20 case, that you -- there is a formal way, but there
21 are other people here who probably know a lot more
22 about it than I do. But there is a formal way to
23 engage in that kind of process that is an open and
24 -- and noticed kind of setting.

25 But at the Public Utilities Commission

1 there's nothing to prohibit applicants before the
2 Public Utilities Commission from communicating
3 with the staff of the Public Utilities Commission,
4 nor should there be. As -- as even the staff
5 write-up notices that this -- this constraint on
6 communication has stultifying effects not just
7 between applicants and staff, but between the
8 State of California and other federal agencies,
9 where BLM or EPA may want to meet with the
10 applicant and staff and other parties to have some
11 communication, but because -- if the applicant's
12 going to be there, the staff doesn't attend
13 because it's not necessarily a state publicly
14 noticed communication.

15 PRESIDING MEMBER LAURIE: Okay. Well,
16 let me ask. Let's say you have a rate case in
17 front of PUC, with an ALJ. Can you have a private
18 meeting with staff?

19 MS. EDSON: Yes. Not with the ALJ. Not
20 with the Commissioners.

21 PRESIDING MEMBER LAURIE: Right.

22 MS. EDSON: Oh, the Public Utilities
23 Commission.

24 COMMISSIONER ROHY: Oh, please say what
25 an ALJ is.

1 MS. EDSON: I'm sorry, Administrative
2 Law Judge. And as here, you could not have a
3 communication with the Hearing Officer or
4 Commissioner or Commissioner Advisor. And we --
5 we aren't raising any objection to those
6 constraints on communication with decision makers.

7 But in an environment where everyone is
8 I think a little taken aback by the -- the
9 workload that's involved here, we envision this as
10 a way to help move cases along, as opposed to, you
11 know, create this flood of requests for
12 communications with the staff, and to somehow slow
13 this process.

14 I think to the extent that you end up
15 having to examine every single item in a public
16 setting in a public hearing, subject to the
17 constraints that that imposes, that you, by
18 definition, slow the process down.

19 So this is -- this is, from our point of
20 view, probably the single most important change
21 the Commission can make to its regulations that
22 will simplify this process in a way that is
23 consistent, in our view, with environmental
24 protection and public participation in the
25 process.

1 PRESIDING MEMBER LAURIE: Okay. Well,
2 what do you about the fact that in some of our
3 cases we have 10, 12, 14 intervenors, all of which
4 -- including any member, any additional member of
5 the public, can call up and ask for a meeting.
6 And if there -- to be a level playing field and
7 the applicant has the ability to meet with staff,
8 then should not the other dozen intervenors have
9 the ability to meet with staff privately?

10 MS. EDSON: Well, I think it's in the
11 normal course of business you're -- you're going
12 to communicate as demands are made on you. And in
13 the case of all of these other agencies, that
14 communication indeed does occur without it
15 creating a huge burden on parties. I would argue
16 that spending six hours in a publicly noticed
17 workshop is much less efficient than maybe --
18 maybe you have, you know, six parties in your
19 case. My best is you're going to have maybe six
20 15 minute conversations.

21 You know, what is the trade-off here?
22 You know, what is the time trade-off? Publicly
23 noticed workshop, not only do you have the staff
24 person that's being called upon, but you have that
25 staff person's manager, and you may have other

1 experts in other policy areas that are called upon
2 for, you know, two minutes of communication that
3 could've been handled in two minutes on the
4 telephone, but take them three hours in a publicly
5 noticed workshop.

6 So I'm not convinced that the efficiency
7 of allowing this communication to occur is
8 something that would not be improved by using that
9 kind of communication.

10 PRESIDING MEMBER LAURIE: Okay.

11 COMMISSIONER ROHY: Excuse me. May I
12 seek clarification on your question.

13 Are you suggesting then that intervenors
14 would have equal access to staff as the applicant?

15 MS. EDSON: Absolutely.

16 COMMISSIONER ROHY: Thank you.

17 MS. EDSON: Yeah. There's no reason
18 that -- that intervenors could not also call the
19 staff and exchange information. I mean, much of
20 this is not even going to take place, I think, in
21 formal meetings. It's -- it's clarifying
22 understanding of issues, it's clarifying the data
23 that's been submitted, it's gaining a better
24 understanding on both sides of what the -- what
25 the information represents and what people believe

1 it to show.

2 PRESIDING MEMBER LAURIE: Karen, what
3 about the whole question of the formality of our
4 process. Sworn testimony, witnesses, direct
5 examination, cross examination, forcing witnesses
6 to take an oath.

7 Do you desire continuation of that kind
8 of proceeding, or do you favor a proceeding which
9 is more compatible with a local decision making
10 process, where you just have people come up and
11 speak?

12 MS. EDSON: Well, you know, IEP has not
13 come forward to advocate backing away from the
14 formality of the process, although I think it is a
15 constraint on the process. And I think it -- it
16 complicates it and makes it less accessible to the
17 public, because I think when they walk into that
18 formal setting it's really quite intimidating.

19 And yeah, I --- I would -- if that's
20 something the Commission really wants to consider,
21 I mean, it's raised to some extent by the last
22 item on functional equivalency and whether this
23 ought to become more like a conventional CEQA
24 process, if the Commission is -- really wants to
25 look at that hard and maybe consider that, then

1 I'd like to take that back to the IEP membership
2 and have further discussions with them.

3 The value of having that formality is in
4 that in the event of litigation, you do have that
5 formal record which is, I suppose -- I'm not an
6 attorney, but I -- they tell me that it has some
7 value. So I think that's -- that is the trade-off
8 in these cases.

9 With regard to the various deadlines on
10 asking questions and entering cases, things of
11 that sort, IEP's position is that it is a
12 appropriate to impose deadlines on intervenors;
13 that an intervenor -- there is intervenor status
14 that's offering to cross examine, present sworn
15 testimony, et cetera, and that with that, those
16 rights, comes a responsibility to meet reasonable
17 deadlines.

18 I'm not here to tell you what I think
19 the specific deadline should be, but we do think
20 it is a reasonable thing to do. And we think that
21 the kinds of deadlines you propose as well on
22 making filings and having rulings for applicants,
23 as well, are -- are -- it's a reasonable idea.
24 The greater clarity we can get in this process,
25 the better, from -- from our point of view.

1 I did want to say a little bit more
2 about local override. The issue is really raised
3 in the legislative section of this report, and I
4 think there are also things that could be done
5 administratively, under the Commission's existing
6 powers. And we do believe that there is room for
7 work here in terms of defining the process again
8 that the Commission will -- will use, the time --
9 when you would be identifying the discrepancies
10 with local ordinances or regulations, when you
11 would create opportunities for changes in that
12 situation, and when you would create the
13 opportunity for an applicant to come to the
14 Commission to ask for that override.

15 So we think there are things that could
16 be done administratively in that area, and I do
17 think it's an intervenor issue, to a large degree,
18 so I did want to identify that at this time.

19 PRESIDING MEMBER LAURIE: Do you desire
20 to -- or will you be offering additional more
21 specific comments on that?

22 MS. EDSON: Well, I -- yes, we will be
23 working further on this. I can't promise you that
24 we're going to have a detailed proposal by the end
25 of this week, but we -- we do intend to work on

1 this and come forward with an affirmative proposal
2 to the Commission.

3 PRESIDING MEMBER LAURIE: Okay.

4 MS. EDSON: And quickly, on the other
5 items that I think Terry identified, electronic
6 filing sounds good to us. And I think Mr. Joseph
7 identified some things that you have to be a
8 little careful about.

9 We talked about limits. I think that I
10 -- I think I hit the main, the high points. I
11 have further comments on siting fees and a number
12 of these other issues, but I'll hold those for a
13 later time.

14 PRESIDING MEMBER LAURIE: Okay. Mr.
15 Harris. Oh, I'm sorry. Sir, I think you were
16 next. Go ahead.

17 MR. GARBETT: Okay. William Garbett,
18 speaking on behalf of the public.

19 I'm going to mention a couple of real
20 world examples, not to go and denigrate anyone,
21 references to any company names are totally
22 irrelevant. But it's just to go and serve as an
23 example so that it may give you some thought.

24 Basically, a number of months ago,
25 Chairman Laurie, I asked if a person who gave

1 testimony that whether it be in writing, as a
2 declaration under California law, which is the
3 equivalent to an affidavit, should they be given,
4 their testimony at that point in time be given the
5 same status as an intervenor or an applicant.

6 I believe in the Code of Civil Procedure
7 there is an equivalency in California, and I think
8 you should make it part of your regulations. Not
9 every member of the public wants to become an
10 intervenor with the full amount of duties of an
11 intervenor. However, many times their sworn
12 testimony is pertinent, and if they reduce it to
13 writing, they either put it in an affidavit form
14 or a declaration, it should be considered with the
15 same weight as an applicant or an intervenor in
16 your process, and this would help out.

17 With the intervenors also, they should
18 enjoy a special relationship in California,
19 particularly in the Code of Civil Procedure under
20 the private attorney general rule, in which case
21 they actually are acting upon behalf of the state
22 as a private party who is intervening as if the
23 attorney general was actually doing things.

24 For that reason, I think you need to
25 change your regulations a little bit to go and get

1 a status where, for instance, they are able to
2 obtain all information, including that information
3 that you claim is privileged, proprietary, or
4 competitive for other reasons. And I think what
5 is commonly called a non-disclosure agreement
6 works very good. And I think it's commonly used
7 throughout industry all over. Non-disclosure
8 agreements should be used. Perhaps restricted
9 data should be used, materials not to be copied.

10 And I believe that intervenors, in order
11 to actually look at a project fully, need, for
12 instance, Native American burial grounds,
13 historical artifacts, and such things as this, are
14 pertinent as to where the exact siting of a
15 project should be. Yes, they should not be
16 released, you might say, and published for
17 wholesale looting of this, but the intervenors do
18 have a necessity for getting this information.

19 And then again, are you discriminating
20 against a race or ethnic background, and religious
21 -- giving that privilege only to Native Americans,
22 or should you extend this to other classes. I'm
23 sure the state law is one of those things. We
24 don't want to challenge it, we kind of like what
25 it is, but I think the intervenors have a need for

1 the knowledge of these items.

2 The proprietary or the commercial
3 aspects, for instance, most recently I was just
4 observing PG&E, for instance, had a proposal to
5 basically build up their backbone of transmission
6 towers and their substations in this one area that
7 just happened to coincide in advance of the
8 placement of one of the applications that you have
9 before you. The coincidental problem was, was
10 that PG&E is a distributor and are also a
11 supplier. So by giving the information to the
12 distributor, because they were a supplier, the
13 corporate veil has to be pierced here. It's one
14 and the same.

15 And therefore, there is no proprietary
16 or commercial information since, in fact, it was
17 shared, and PG&E in fact was doing their most to
18 get the additional facilities installed at public
19 expense through the PUC for them. It's
20 coincidental there, but the EIRs they declared
21 were non-existent in their documents. Interesting
22 facts.

23 But in any case, the intervenors have
24 need for this, and through the disclosure
25 agreements I think this should be incorporated in

1 your regulations that -- under the private
2 attorney general's rule, that there is an
3 important duty of an intervenor to consider all
4 the things that the applicant is doing, as well as
5 the Commission.

6 There should also be, at some point in
7 time after the application, a proof of performance
8 of the applicant. For instance, typically I
9 believe that should be a 24 hour test of the power
10 generation plant. Hopefully, then three years
11 after the application is approved. But basically,
12 consider are things valid, did it meet the thermal
13 minimum efficiencies that the Government Code
14 requires.

15 You also have credits, or pollution
16 credits. Unfortunately, these do not exchange one
17 for one. You may be exchanging paint thinner for
18 NOx, CO for, you know, bathroom cleaner. It is
19 not a one for one exchange. You are not actually
20 cleaning anything up in the process. We are
21 actually losing. Even in non-attainment areas
22 there may be overriding considerations for the
23 placement of a power plant. But I think this
24 should be more looked at, the convenience and
25 necessity of the public in some cases, and whether

1 the phony baloney credits are going to be bartered
2 away in the marketplace. And I think some merit
3 should be given to that.

4 Electronic filing is nice, but due to
5 the lesser sophistication of intervenors compared
6 to the applicant, I think they need a hard copy of
7 paper, as well. Because quite often, they need
8 something that's a backup, and their electronic
9 means may not work all the time. For instance,
10 now you're using, for instance, some of the
11 methods that you're using, I think the PDF files
12 should be something that should be used. The
13 Adobe PDF, once again, comes to the surface
14 because it sure beats the Microsoft macro viruses
15 that are widely spread, that are perhaps in your
16 present file systems.

17 You should make a record of ex parte
18 communications. And what happens is there should
19 be some quality meetings made. You might call
20 them workshops, by any other name, but at points
21 in time you have to have these ex parte meetings
22 between staff, whether it's the applicants, the
23 intervenors, other things, call them workshops.
24 And during the year's process, you should have
25 perhaps as many as three of these spaced

1 throughout after the application, a period of
2 time, first workshop before your evidentiary
3 hearings, another one perhaps after the
4 evidentiary hearings, another one for any redirect
5 that may be necessitated. And I think you'll come
6 to a better conclusion.

7 Right now, we are using the Public
8 Adviser's Office, who seems to be an impartial
9 third party. They relay stuff back and forth.
10 They're impartial, they've been very effective.
11 Perhaps this is a means that you need. And
12 perhaps they can keep a record of these ex parte
13 communications.

14 The testimony of people is very
15 important. But we have to go and look at a few
16 other things beyond that. We also have to look
17 under the CEC as being an equivalent agency to the
18 CEQA process. The streamlining, under the
19 governor's office, of the CEQA process through the
20 Governor's Office of Planning and Research, and
21 the CEC versus the local authorities that we have
22 that may become lead agencies under CEQA.

23 With the local agencies, I worry there
24 because presently I'm a candidate for city council
25 myself, but unfortunately I see that the access --

1 call them lobbyists or not, in order to get access
2 to certain areas of the city government where I
3 live at, you actually have to make a donation to
4 their political campaign and a donation to their
5 office fund, and once that's in place you can talk
6 with just about anyone at any point in time, and
7 it almost buys you a favorable decision.

8 I don't think the CEC is in that
9 particular shape, but you need some way of having
10 an ex parte communication of some kind going on.

11 The applicants here today have been as
12 far as the intervenors. Okay. We need a little
13 bit of time to talk with staff on occasion. No
14 one puts anyone else down. We've had a fair
15 meeting here today. People are congenial. They
16 want an exchange of information. And this flow of
17 information is where valid decisions will arise
18 from the Commission at a later point in time.

19 The ex parte process should be
20 controlled to some degree, because you do need a
21 record of when improprieties might occur, if
22 indeed they do.

23 You also have to look at, for instance,
24 rather than natural sources of energy, you also
25 have to look at economies and foreign fuel

1 markets. For instance, the importation of liquid
2 natural gas, would this be trucked by rail, would
3 it be delivered by truck, would it be put in
4 pipelines and transported through the present gas
5 network. How are these means going to be used.

6 We haven't looked at this other than,
7 for instance, what comes down the pipeline that we
8 all connect to. There are alternative means and
9 alternative fuel sources that we have to look at,
10 including backups, for instance propane or methane
11 still on site, or other materials.

12 That pretty well gets beyond the written
13 comments that I submitted, that are also going to
14 be part of your record.

15 PRESIDING MEMBER LAURIE: Thank you,
16 sir, very much. Your comments are appreciated.

17 Mr. Harris.

18 MR. HARRIS: Jeff Harris, I guess lawyer
19 about town today.

20 I'll try to stick to a couple of the
21 questions that were presented.

22 A deadline for intervention I think is a
23 good thing. It needs to be a reasonable deadline,
24 though. We want -- we don't want to cut people
25 off who don't somehow get involved in the project

1 sooner. So, but there is something to be said for
2 that kind of certainty.

3 I guess one of my themes on this comment
4 is drawing a distinction between the more formal
5 part of your proceeding in a siting case, and the
6 informal. And I kind of think of it as a
7 discovery phase early on, with workshops and the
8 development of information, and then you switch to
9 a more formal phase when you hit the evidentiary
10 hearings. And that formal versus informal,
11 discovery versus adjudication, I think is an
12 important distinction in your regulations. And it
13 may be a valuable one for dealing with some of
14 these questions about contacts.

15 I think currently, the deadline is
16 around the pre-hearing conference. The only
17 reason I think at all that you want to make sure
18 there is a firm deadline is that the applicant and
19 the -- and the parties need the opportunity to
20 know who's involved in the case, have a chance to
21 have everybody pre-file testimony, have folks
22 review that testimony, and have the adjudicatory
23 hearings go forward.

24 So we would support some kind of
25 deadline that's -- that's a reasonable deadline

1 for all so we can have some certainty about that
2 proceeding.

3 Let me mention real quickly, number
4 four. No one else has talked about -- I think
5 that was on the list, the letters of intent.

6 I'd like to talk to some of our air
7 experts and see if there's any concerns about
8 those definitions, and we'll want to work with you
9 in developing those.

10 But the main point that I want to make,
11 and the point that I want to emphasize, is that on
12 item five, related to notice. We've been talking
13 a lot about notice issues here, and particularly
14 about ex parte contacts. And that's again why I
15 draw the distinction between formal and informal
16 portions of your proceeding.

17 Backing up for just a minute. Looking
18 at your current regulations, there is no ex parte
19 prohibition against contacts between applicants,
20 intervenors, and staff. That ex parte rule
21 applies only to, as you all know, the decision
22 makers, which are defined roughly as the
23 Commissioners, their Advisors, and the Hearing
24 Officers. And that model is, I think, what you
25 see commonly used in agencies.

1 And I think it's important to lay that
2 out there, because there's some confusion I think
3 already today about what the ex parte rule is.
4 And that confusion leads to the impressions that
5 something illicit or illegal is occurring if
6 there's a conversation between staff and an
7 intervenor, or staff and an applicant. It's not
8 the case. Your own regulations currently do not
9 prohibit that kind of contact. And I think there
10 is a widespread misperception that it does. And
11 that then kind of feeds and fuels into the
12 impression that something wrong is going on here.

13 So I can't emphasize that strong enough,
14 that there is currently nothing in your
15 regulations that would preclude the staff and
16 applicant, and the staff and intervenors from
17 talking to each other.

18 On this same issue about whether you
19 ought to limit those kind of contacts, again, I
20 think maybe the idea of a formal versus an
21 informal process should kick in. Maybe there's a
22 point down the road when you get to evidentiary
23 hearings, perhaps, where you decide that no ex
24 parte contacts, or they have to be reported like
25 they are at the PUC. But somewhere along the

1 line, there has to be that informal communication,
2 because we're seeing -- we're hearing two
3 different things here. We're hearing, on the one
4 hand, don't allow informal contacts. And on the
5 other hand, don't make this a rigid lawyer only
6 process.

7 And that's why I think you can have it
8 both ways, if you can have the informal contacts,
9 continue to have those contacts maybe up to the
10 point of the evidentiary hearings. You let people
11 communicate, you deal with all these conspiracy
12 theories, you let people know that there's nothing
13 illicit going on, and then at some point you draw
14 a line in the sand and say we've gone formal now.

15 On the question of obtaining data,
16 number seven. I think a date certain is
17 important. There's some confusion out there as to
18 what an applicant's responsibility is when a data
19 request comes in. And really, you have three
20 options. You can answer, you can object, or you
21 can ask for additional time. Asking for
22 additional time or objecting to a question is not
23 a failure to answer a question. And the
24 impression has been created among some that if you
25 somehow exercise the right to object to a

1 question, or if you ask for additional time to
2 answer a question because it involves complex
3 modeling, that somehow you're not providing
4 information.

5 And actually, what applicants are doing
6 in that case is playing by the rule. They're --
7 they're giving you the 15 day letter, they're
8 giving you estimates, they're giving the staff in
9 the status reports updates as to when those data
10 requests will be answered. And so I think it's
11 important to keep that in mind, as well, that
12 there is a process here, it's very well laid out
13 in the regulations, and it does address these
14 various issues.

15 Moving on to the question of CEQA
16 equivalency. Again, I -- I wholeheartedly agree
17 with staff that this is a CEQA equivalent process.
18 The Energy Commission's process is a certified
19 program, certified by the Resources Agency. So
20 there's no question that you're currently CEQA
21 equivalent. That's not to say that you may not
22 want to take a look at the regulations in figuring
23 out whether there's some noticing issues or some
24 additional information, but there's no question
25 you're currently CEQA equivalent. And that was

1 confirmed in the fact that the lawsuit on this
2 very question was recently denied by the
3 California Supreme Court.

4 So I think it's good that you take a
5 look at the regulations. There's always room to
6 try to make things more -- more of a fit with the
7 current model. But be -- but there be no question
8 that you are currently the functional equivalent
9 of CEQA.

10 One final kind of general global remark.
11 In terms of administrative changes, a lot of the
12 administrative changes proposed by staff have
13 been, I think, good things. We would -- we do
14 think that it's a good idea, though, ultimately to
15 move those things into regulation, as a formal
16 regulation through a rulemaking process. That
17 rulemaking process gives everybody an opportunity
18 to weigh in on those issues and make sure that --
19 that we -- we all know what the rules are.

20 And one of the great things about this
21 agency, as opposed to some other agencies, is that
22 all of your rules and regulations are in the
23 regulations. I don't have to go to rules of
24 practice and procedures, and general orders, and
25 the precedents, and case law and statutes, and

1 find all these various authorities. Yours are
2 currently all in the regulations, and I definitely
3 would implore you to continue that practice and
4 make these -- these changes through a rulemaking
5 process.

6 Thank you.

7 PRESIDING MEMBER LAURIE: Thank you,
8 sir.

9 Do you have any comment on the question
10 that I posed to Ms. Edson about overall perception
11 on the formality of the procedures? Sworn
12 witnesses, cross examination, direct examination.

13 MR. HARRIS: Yeah. I think at the
14 opening of my comments I tried to allude to what I
15 think is one of the strengths of the process
16 currently, is you have a discovery process, for
17 lack of a better term, where we do data requests
18 and we have workshops and those informal. And
19 then it does switch to a more formal process for
20 the evidentiary hearings. And I'm comfortable
21 with that, as I think -- I think that's as it
22 should be.

23 I just want to make sure that we don't
24 end up going to one extreme or another in either
25 one of those phases. Let's not make the discovery

1 phase too formal, and let's not make the
2 evidentiary hearings so informal that they drag on
3 for months, weeks, and years.

4 PRESIDING MEMBER LAURIE: Okay, sir.
5 Thank you very much.

6 Ladies and gentlemen, we're going to
7 take a break until 3:00 o'clock.

8 (Thereupon, a recess was taken.)

9 PRESIDING MEMBER LAURIE: We will finish
10 off the items relating to intervention process.
11 Any additional comment?

12 If not, we will -- okay, we'll go into
13 this. What my intent is to go back and take up
14 where we left off on Warren Alquist. I want to
15 make sure, however, that those who may not be able
16 to be present tomorrow have said everything that
17 they desire to say today.

18 So until 4:00 o'clock, we will proceed
19 along the Warren Alquist lines, at which time I
20 will call for those who will not be here tomorrow
21 for their complete comment. If, however, you make
22 complete comment and you do appear tomorrow, we'll
23 have to figure out some appropriate penalty.

24 (Laughter.)

25 MR. MUSSETER: Mr. Chairman, I have a

1 question.

2 PRESIDING MEMBER LAURIE: Sir.

3 MR. MUSSETER: On what just went before.

4 I'm Bob Musseter.

5 I didn't understand, and I'd like to
6 have Bob Therkelsen follow up, if he wouldn't
7 mind. It seemed to me that we got one answer from
8 you about parties speaking to staff, and a
9 different one from the attorney, about the --

10 PRESIDING MEMBER LAURIE: Okay. So are
11 you asking for a clarification of our current
12 practice, Mr. Musseter?

13 MR. MUSSETER: I'm asking for
14 clarification of that. Yes.

15 MR. THERKELSEN: This is Bob Therkelsen
16 speaking.

17 I'll start out with the phrase that's
18 being used today, I'm not an attorney.

19 Jeff Harris was correct in terms of the
20 ex parte rule. The ex parte rule -- sorry I said
21 that --

22 (Laughter.)

23 MR. THERKELSEN: That's okay. I'm not
24 an engineer, either.

25 (Laughter.)

1 COMMISSIONER ROHY: Nor am I.

2 (Laughter.)

3 MR. THERKELSEN: No comment.

4 Jeff Harris was correct. The staff, the
5 ex parte rule does not apply to staff. Staff is
6 not a decision maker. The ex parte rule only
7 applies to the decision makers, and the ex parte
8 rule prohibits the decision makers from having a
9 communication with any party, including the staff,
10 on a substantive issue on a case.

11 So that applies to the staff, to
12 applicants, to intervenors, to anybody that's a
13 party.

14 The rule that prohibits the staff from
15 meeting with other parties is the noticing rule in
16 Section 1710. And that requires that all
17 workshops, meetings, et cetera, between the staff
18 and the various parties be publicly noticed. So
19 that's the difference I think, former Commissioner
20 Musseter, that explains those different rules and
21 responsibilities.

22 PRESIDING MEMBER LAURIE: Now, when you
23 comment that all workshops, et cetera, must be
24 publicly noticed, does that, in your mind, include
25 all communications? What rises to the level of

1 that kind of communication that necessitates
2 notice?

3 MR. THERKELSEN: Historically, the way
4 that the staff has viewed it is discussion of
5 substantive issues, procedural discussions in
6 terms of timing or some of the process questions
7 have not fallen underneath that noticing
8 requirement, although we do have those discussions
9 in noticing workshops. But it is substantive
10 issues that would be along the line of resolving
11 issues, negotiating positions, presenting
12 positions, discussing positions.

13 Terry, do you have anything you want to
14 add to that?

15 MR. O'BRIEN: No. I would agree with
16 that.

17

18 MR. O'KUROWSKY: Can we ask why it's
19 interpreted that way?

20 PRESIDING MEMBER LAURIE: Sir, I don't
21 mind you asking a question, and it may very well
22 be relevant. But we have to have it on the
23 record. Why don't you just step forward.

24 MR. O'KUROWSKY: Sure.

25 PRESIDING MEMBER LAURIE: And give us

1 your name.

2 MR. O'KUROWSKY: My name is Peter
3 O'Kurowsky, and I just wanted to get a little
4 further clarification on why it is interpreted
5 that way.

6 MR. O'BRIEN: What do you mean, what
7 aspect of it being interpreted in which way?

8 MR. O'KUROWSKY: The -- the all -- I
9 believe your phrase was all issues of substance
10 have to be noticed, and I was just hoping that you
11 could go a little further and provide examples, or
12 explain why you have interpreted the statute that
13 -- it seems like a very tight reading of the
14 statute. And I'm sure there's reason. I was just
15 wondering what they were.

16 MR. O'BRIEN: The main reason for that,
17 back in 1975, when the Commission was created,
18 there was concern about negotiations, deals being
19 cut between the staff and other major parties,
20 particularly the applicant, in closed session
21 without public being able both to listen in and to
22 provide their perspectives. The feeling is that
23 even though the staff is not the decision maker,
24 they are -- they are a prime party in the case.
25 They are a very important moving party in the case

1 in terms of influencing or setting forward the
2 agenda, the issues, the mitigation measures.

3 And so that is my understanding of why
4 that was written the way that it is, and why it
5 has been interpreted the way that it has been.

6 PRESIDING MEMBER LAURIE: And what is
7 staff's proposal now regarding modification, if
8 any, to that position?

9 MR. O'BRIEN: The staff believes that in
10 order to improve the efficiency of how we handle
11 siting cases, that there should be some
12 modification.

13 Number one, we believe that the staff
14 should be allowed to attend unnoticed meetings
15 that are sponsored by other agencies, regardless
16 of who might be attending those meetings.

17 Now, in the past, we've often declined
18 to attend those meetings, number one. Or, number
19 two, when we have sent people they've been
20 instructed to listen, but not to participate. And
21 we think that --

22 PRESIDING MEMBER LAURIE: Terry, is that
23 a matter of office practice or regulation?

24 MR. O'BRIEN: Well, it's been office
25 practice, but there have been varying

1 interpretations, if you will, as to what Section
2 1710 requires or does not require. And, you know,
3 I think that the staff has taken a conservative
4 reading in the past of 1710.

5 PRESIDING MEMBER LAURIE: Okay. That
6 was one point. What was the other point of
7 modification that you indicated. One, you want
8 staff to attend meetings. And what's the other?
9 How else would you further modify the notice rule?

10 MR. O'BRIEN: Well, we believe that the
11 regulation probably needs to provide some
12 additional detail regarding what conversations can
13 occur between the staff and not only the
14 applicant, but other parties to a proceeding. And
15 getting to the issue of substantive versus non-
16 substantive. We don't have -- we have not -- we
17 don't have crafted language at this time. It's --
18 it's something that's been discussed internally
19 between members of the Siting Division staff,
20 between our Legal Office staff, Hearing Office
21 staff, and the Public Adviser.

22 So at this point in time, we don't have
23 specific language that we would recommend to the
24 committee, but what we were interested in today
25 was obviously hearing the viewpoints of the

1 various parties on this issue.

2 PRESIDING MEMBER LAURIE: Does staff
3 have concerns over substantive discussion among
4 any member of the public with staff?

5 MR. O'BRIEN: Well, I think staff's
6 position has been, and I believe continues to be,
7 that it's not appropriate for staff to have
8 substantive discussions with any party to a
9 proceeding on a siting case. But having -- having
10 said that, it's also not clear when you read the
11 regulations as to whether or not you can sit down
12 and have a just general procedural discussion with
13 a intervenor or an applicant, even though if you
14 couldn't, you basically couldn't put on a case.

15 MR. THERKELSEN: Commissioner, let me
16 add a little bit more to that. Our desire would
17 be to maintain the noticing requirement when there
18 is a substantive discussion, in particular when
19 there is discussion about positions on an issue,
20 and, if you will, almost negotiations in terms of
21 that position between the parties.

22 However, we would like a little more
23 flexibility to deal with any of the parties when
24 we're seeking clarification of data, when we're
25 seeking to get basic information to enable us to

1 do our work in a more timely and efficient manner.

2 PRESIDING MEMBER LAURIE: If there are
3 -- in any given case, if there's an applicant and
4 three intervenors, is there any rule that bars the
5 applicant from having a cup of coffee with one,
6 two, or three of the intervenors?

7 MR. THERKELSEN: If you read Section
8 1710 in a very strict manner, my answer to that
9 would be yes. They are parties in the case, and
10 if they're talking about a substantive -- that cup
11 of coffee involves a discussion on a substantive
12 issue, that should be a noticed meeting.

13 PRESIDING MEMBER LAURIE: Don't those
14 discussions go on on a regular basis?

15 MR. THERKELSEN: I would imagine they
16 probably do.

17 (Parties speaking simultaneously.)

18 MR. THERKELSEN: The experience we're
19 dealing with is -- is, you know, interpretations
20 of that regulation, both internally, and also
21 complaints, if you will, that have been made by
22 various parties if -- if we have been involved in
23 a meeting with another party. That's why we want
24 to get clarification, we desire to get
25 clarification on the regulations.

1 PRESIDING MEMBER LAURIE: Okay. Well,
2 if -- if you have an applicant and -- and one
3 intervenor, and it's obvious that the applicant
4 has been meeting with Intervenor One, much to the
5 chagrin of Intervenor Two, who wants to cut some
6 different deal, should Intervenor Two have the
7 right to prohibit the discussion between the
8 applicant and Intervenor One?

9 MR. THERKELSEN: I would imagine as a
10 party to the case, that Intervenor Two could ask
11 that that discussion be held in a public forum,
12 and should be entitled to that.

13 PRESIDING MEMBER LAURIE: All right. Do
14 you think it's a good thing that there is free and
15 open discussion between applicant and Intervenor
16 One?

17 MR. THERKELSEN: If it's on a
18 substantive issue on the case --

19 PRESIDING MEMBER LAURIE: No.

20 MR. THERKELSEN: -- my feeling is all of
21 the parties should have access to that discussion.

22 PRESIDING MEMBER LAURIE: Let's say it
23 is substantive. Let's say Intervenor One is a
24 neighborhood interest group. And they have these
25 series of concerns. And they're substantive.

1 They deal with, oh, aesthetics, road or traffic
2 issues, air, water. Should not the applicant be
3 able to sit down with these folks and work out a
4 deal to solve their problem, as part of their
5 application process?

6 MR. THERKELSEN: I guess the question
7 that I get into is thinking about where -- how you
8 differentiate between the various parties in a
9 case.

10 PRESIDING MEMBER LAURIE: Exactly the
11 point.

12 MR. THERKELSEN: Right. And if staff --
13 is staff a different type of party than anybody
14 else.

15 PRESIDING MEMBER LAURIE: Exactly the
16 point.

17 MR. THERKELSEN: And if you're going to
18 allow it in one case, then allow it in all cases.
19 If you're not going to allow it in a case, then
20 you don't allow it in any case.

21 PRESIDING MEMBER LAURIE: I -- staff is
22 not the decision maker.

23 MR. THERKELSEN: Right.

24 PRESIDING MEMBER LAURIE: So I don't see
25 any distinction between some member of the public

1 being disgruntled about applicant meeting with
2 neighborhood group one and cutting a deal, leaving
3 them out, as opposed to applicant meeting with
4 staff to have a discussion on the same issues.

5 I'm having a difficult time
6 differentiating.

7 MR. THERKELSEN: The theory is all
8 members of all parties should have equal access to
9 the decisions and the discussions.

10 PRESIDING MEMBER LAURIE: Okay. Vice
11 Chairman Rohy.

12 COMMISSIONER ROHY: A couple of
13 comments. One is obviously we have no power to
14 police a discussion between the applicant and
15 intervenors, or Intervenor A and Intervenor B.
16 They've signed those agreements to do that, and so
17 we have no authority there, and I'm not seeking
18 it, just to make my point.

19 MR. THERKELSEN: And we don't wish to be
20 a policeman that way.

21 COMMISSIONER ROHY: That's correct. The
22 only concern I would have is should staff and
23 applicant get together on conditions of
24 certification that might not be -- the basis of
25 which are not publicly available. So if

1 discussions were free and open between the
2 applicant and the staff, my question would be
3 could that be seen as a -- affecting the outcome
4 of staff's recommendation because it was done not
5 in the open.

6 My English is torqued terrible on this,
7 but hopefully I got my point across.

8 MR. THERKELSEN: I think one of the
9 things that we have attempted to do in the past if
10 there was some inadvertent discussion, if there
11 was a situation where we sent staff to a meeting
12 that was sponsored by another agency and the
13 applicant had -- was there, but we had instructed
14 our staff not to speak, even in those instances,
15 we have prepared written summary of the meetings,
16 written summary of the discussions that occurred,
17 and put that into the record so it was there,
18 available for everybody. If someone wanted to
19 cross examine the staff on what occurred and what
20 was said, that would be available to people.

21 COMMISSIONER ROHY: So if we were to go
22 to a situation, and let's forget the past for a
23 moment, what our practice was or is, where
24 applicant and staff could meet or applicant and
25 intervenor could meet, there'd be no restrictions

1 on those type of meetings through our regulation.

2 MR. THERKELSEN: Right.

3 COMMISSIONER ROHY: Would you then, as
4 the lead of the siting staff, continue to put
5 those memos out when you -- you did have such a
6 discussion?

7 MR. THERKELSEN: We would continue to
8 put that out. One of the things that we were
9 thinking about when we were kicking this idea
10 around internally, is if we lightened, if you
11 will, that noticing requirement, we could see
12 putting into the regulation a requirement that
13 those meetings, if and when they ever did occur,
14 that there would be a summary of the meeting
15 prepared and entered into the record.

16 COMMISSIONER ROHY: Thank you.

17 PRESIDING MEMBER LAURIE: Yes, sir.

18 Hold on a second.

19 Mr. Therkelsen, let me just iterate my
20 pre-Commission experiences on this subject, as
21 opposed to some other subject. And it might then
22 reflect a bias on my part as to this issue.

23 My experience has always been an
24 applicant submits a land development project.
25 Local entity does an environmental analysis of it,

1 either in-house or by contract. Environmental
2 analysis results in proposed mitigation measures.
3 I think more often than not, applicant has had
4 access to the staff writing the environmental
5 analysis.

6 The environmental analysis is completed,
7 staff makes a recommendation to decision making
8 body. It includes not only proposed mitigation
9 measures under CEQA, but additional conditions on
10 the project. And with rare exceptions, staff is
11 -- the applicant has had access to the staff
12 that's writing the conditions of approval that
13 would include the environmental mitigation
14 measures.

15 When the matter is brought into the
16 public setting, the public has a right to object,
17 either, A, the proposed mitigation measures, or B,
18 additional proposed conditions of the project.
19 And is it staff's view that that results in a
20 flawed process?

21 MR. THERKELSEN: I don't think it's fair
22 to say that it's a flawed process. I take the
23 same approach that Marc Joseph took earlier. I
24 think the process that we have results in a better
25 analysis, a better presentation to the decision

1 makers, and the public a broader perspective in
2 which that staff analysis, those mitigation
3 measures, et cetera, are presented.

4 So I don't want to judge that the
5 previous process was flawed, but I do think that
6 the result that we have is a better process.

7 PRESIDING MEMBER LAURIE: Thank you.

8 Mr. Williams and Mr. Harris.

9 MR. WILLIAMS: Thank you, sir. Robert
10 Williams. Just a few brief reactions to what's
11 gone before.

12 First, procedural issues are every bit
13 as substantive, in my opinion, as technical
14 issues. So this -- this distinction the staff
15 makes sometimes seems to me to be totally
16 arbitrary, that we can meet privately with lawyers
17 over procedural issues but we meet publicly with
18 people over technical issues.

19 Secondly, I think again we're seeing a
20 conflict in the vision of the Commission, and in
21 the role of the Commission. If, indeed, the
22 Commission staff are advisors to you jurors, then
23 in every sense of the word they are playing a role
24 in the decision making. And somehow to pretend
25 that senior staff are not decision makers, you

1 know, let me just say you're a lawyer, your
2 analysis of does the air quality data make sense
3 or doesn't it, you're going to have to rely on the
4 staff.

5 If I understand the structure of the
6 Commission only one Commissioner is going to be
7 anywhere near a technical expert on air quality
8 control. So I think it's a -- one of these myths,
9 a figment, a legal figment, to pretend that the
10 senior staff are somehow not decision makers.

11 Now, in the proposals of the
12 Californians for Renewable Energy, to some extent
13 myself, we've tried to persuade you to become more
14 like the FAA, or more like the NRC. And your
15 staff would be monitoring a band of consultants.
16 You know, CH -- a air quality analyst for CalPine,
17 and they cannot be the air quality analyst for the
18 CEC staff.

19 Now, in the nuclear business, the whole
20 industry of consultants is structured on are you
21 an advisor to the applicants or an advisory to the
22 regulators.

23 Finally, I'd like to react to Mr.
24 Harris' point. Again, Mr. Harris thinks this is a
25 jolly free for all on a one year schedule, until

1 seven or eight or ten months into the process.
2 Suddenly, we should get very formal and have
3 evidentiary hearings.

4 My view again, and the proposal I offer
5 to you, is a one year process ought to begin
6 almost immediately, at the evidentiary stage. A
7 three year process would have time for this jolly
8 good fellows, we're good old boys, and a lot of
9 meetings, and a lot of give and take between
10 intervenors. And I would allege that this can be
11 part of a site banking process, and nobody's ox is
12 really getting gored because we haven't got
13 contracts for turbine deliveries and tower
14 deliveries and power contracts a year or two down
15 the road.

16 In the spirit of being brief, thank you.

17 PRESIDING MEMBER LAURIE: Mr. Harris.

18 MR. HARRIS: Jolly. I've been called a
19 lot of things, but jolly's not one of them, given
20 my resemblance to St. Nick, but recently I'm
21 working on how to work out more.

22 A couple of thoughts, briefly, that we
23 -- we've arrived at -- I think at a good point.
24 We all realize now the ex parte rule only applies
25 to decision makers, Commissioners, the Hearing

1 Officers, and the staff of the Commissioners. So
2 that's good, we've got that out on the table.

3 So the real question then becomes what
4 does 1710 require. And one of the things I'd have
5 you do is take a look at the language, because
6 what it says right at the beginning, at 1710A.
7 All hearings, presentations, conferences,
8 meetings, workshops, and site visits shall be open
9 to the public.

10 And then it goes on and starts narrowing
11 about site visits, and then about hearings and
12 workshops. So it's a pretty discrete set of
13 things to which 1710 applies. And we're not
14 suggesting, I think, in the least, that there be
15 private workshops or anything along those lines.
16 And so I think that that reading of 1710 is -- is
17 far too narrow. And I don't think that was what
18 was intended.

19 Also, looking at the language of 1710,
20 there's no distinctions drawn between substantive
21 issues and -- and procedural issues in that
22 discussion, as well. So to try to turn around and
23 use the ex parte rule as discussion of substantive
24 and procedural, we'd stop that in the 1710. I
25 think it is reaching quite a bit.

1 The key point I think has already been
2 made several times, is that the staff is not the
3 decision maker here. Staff obviously has an
4 influence in the outcome, but the staff is an
5 independent body, it puts together an independent
6 analysis that's the final staff assessment. They
7 are not the decision makers, and to draw a
8 distinction that says that you can have
9 conversations until you get to the point where
10 you're negotiating fails to understand that you're
11 not negotiating with staff. Staff is not a
12 bargaining -- in a position to bargain for a
13 license here. The bargaining that takes place,
14 there isn't any bargaining.

15 And so the distinction between
16 substantive and procedural discussions to me is --
17 also falls on faint ears, and I go back to my
18 jolly references to the informal and the formal
19 portions of this proceeding. I think that
20 discovery is intended to be informal. And that's
21 why we can have this informal. And I would not
22 actually be opposed -- and going out on a limb,
23 having not talked to any of my clients since I've
24 been here all day -- wouldn't be opposed to the
25 idea of either limited ex parte after the -- after

1 the evidentiary hearings begin, or maybe even the
2 complete ban on any ex parte -- or, excuse me, any
3 staff contacts. Used the wrong words. Now I've
4 mixed up the terms. Bob is admonishing me here.

5 But maybe that's the point at which the
6 staff and applicants and the intervenors can't
7 talk without reporting it anymore, at the point
8 you go to evidentiary hearings. And, you know,
9 I've made light of this thing about it being a
10 jolly idea, but it's not a jolly idea. It's
11 actually the regulations, the way things are set
12 up, in the informal phase and a formal phase, and
13 the more I think about that idea, the more I think
14 it might help us get to a point where everyone
15 understands that there's nothing illicit happening
16 when applicants and intervenors talk to staff.

17 PRESIDING MEMBER LAURIE: Thank you,
18 sir.

19 COMMISSIONER ROHY: May I ask a
20 question?

21 PRESIDING MEMBER LAURIE: Dr. Rohy.

22 COMMISSIONER ROHY: This will probably
23 be a topic we'll take up tomorrow, but I'm not
24 sure you'll be here tomorrow so I'd like to ask
25 your view on it.

1 If we have this period of time at the
2 beginning where we have more informal -- and I'll
3 refrain from using jolly -- but informal
4 discussions --

5 (Laughter.)

6 COMMISSIONER ROHY: -- and during that
7 period, staff usually prepares what's called a
8 preliminary final staff analysis. It's a
9 predecessor to any evidentiary hearings.

10 What would your feeling be then on
11 people who might say we could use that final staff
12 analysis as a CEQA document for local agencies to
13 do their land control or land changes?

14 I know I'm off topic, but I just had to
15 follow up on that comment of yours.

16 MR. HARRIS: I'm very tempted to say
17 that I will be here tomorrow -- get a night to
18 sleep on it. But --

19 COMMISSIONER ROHY: You can answer
20 tomorrow, if you'd like.

21 MR. WILLIAMS: Please answer today.

22 (Laughter.)

23 MR. HARRIS: Would you like to give me
24 an answer? I'll give you a brief answer, and I'll
25 -- I'll definitely be available tomorrow, as well,

1 to answer on this issue.

2 Where is the detailed environmental
3 analysis that the Commission performs? I think
4 the answer is it is definitely in the final staff
5 assessment. If you read the information in the
6 final staff assessment, it talks about impacts and
7 mitigation, and conditions to mitigate those
8 impacts. And if you pick up a Commission final
9 decision, or even a PMPD, it gives you very little
10 insight into how the Commission got to that point,
11 especially compared to the FSA.

12 And I think that that's -- that's a
13 simple reading of those two documents together, a
14 final staff assessment has a lot of detailed
15 environmental information. A PMPD and a final
16 decision are -- are much more focused on
17 conditions of certification, and don't have the
18 same kind of detail. So I think there is a good,
19 strong basis for taking a look at the final staff
20 assessment as -- as the environmental document.

21 As we discussed a little bit today, it's
22 routinely done in the traditional development
23 setting. Even though there are limits, we're back
24 to Avenue A and Avenue B again. There are limits
25 at which point you have to recirculate a document.

1 But it is routinely done in the development
2 setting.

3 And additionally, without talking about
4 any specific cases, you know, we're hearing from
5 local governments that that document, the final
6 staff assessment, is a document that has the kind
7 of information that they need to make the land use
8 decision that they're going to have to make. And
9 let's focus on that for a minute.

10 The local government needs a decision,
11 an environmental document to make a decision. But
12 the decision that they are making is not a
13 decision to site a power plant. It's a decision
14 to change the land use, rezone some property.
15 It's a different decision in scope than the full
16 -- full information. So for a specific example,
17 integrated assessment of need will be in that
18 document. That'll be of really little value to a
19 land use agency. There may be other sections of
20 that FSA that are not as useful to that local
21 government.

22 Also keep in mind, too, that the local
23 government, even by doing a rezone, that's not the
24 end of the line. There's still a local review
25 process that goes on, there are permits that'll

1 have to be had, and there's more specific zoning
2 that goes on. So there -- there is additional
3 public review beyond the actual rezone of general
4 plan, as well.

5 Those are kind of my initial thoughts on
6 that.

7 COMMISSIONER ROHY: Well, let me
8 challenge you as something that I will engage you
9 on tomorrow. If --

10 MR. HARRIS: Looks like I don't sleep
11 tonight.

12 COMMISSIONER ROHY: -- if one were to
13 accept that view that you just espoused, then I
14 would contend that you have just made staff a
15 decision maker, and in fact there shouldn't be an
16 ex parte rule, not just a 1710 rule, during the
17 entire process.

18 MR. HARRIS: Let me respond.

19 COMMISSIONER ROHY: I will let you sleep
20 on it.

21 MR. HARRIS: No, let me respond.
22 Because I think there would have to be, in the
23 scenario I just set out using the -- the final
24 staff assessment as -- as the environmental
25 document, in addition to having that final staff

1 assessment I think you're going to need a full
2 Commission resolution that certifies that document
3 as an environmental document, as the environmental
4 document for that case.

5 And so once the final staff assessment
6 is out, you're going to have to have an additional
7 step, and that additional step would be a
8 Commission decision, and maybe it could be a
9 committee decision, that says here is a resolution
10 certifying the final staff assessment as the
11 environmental document for this decision. Not as
12 a final decision in the siting case, but as the
13 environmental document. So you will have then, in
14 that case, the decision makers certifying the
15 document as required by CEQA.

16 COMMISSIONER ROHY: Speaking for one
17 Commissioner, myself, I could not make that vote
18 without having gone through evidentiary hearings
19 and hearing the basis for that decision. But we
20 -- let's wait for tomorrow for that. I just
21 wanted to get you thinking on it so that we'll be
22 churning tomorrow.

23 MR. HARRIS: Okay. Thank you.

24 PRESIDING MEMBER LAURIE: Anything else?

25 MR. O'KUROWSKY: Thank you. Again, my

1 name is Peter O'Kurowsky, I work with a company
2 called California Environmental Associates. And
3 as somebody who's not going to be here tomorrow, I
4 just would like to make a request that the staff
5 give full consideration to allowing open and
6 honest conversation in almost all phases, if not
7 all phases throughout the process.

8 In working with other state agencies,
9 local agencies, state government, local
10 government, federal government, I'll just take it
11 down out of the regulations, out of the section
12 numbers. In general, everyone understands that
13 certain decisions need to be made by staff, and
14 those are specifying what has to be made. But
15 communications with the staff in almost every
16 situation I've ever been in has never jeopardized
17 the feeling of independence or unbiasedness.

18 And I seem to be getting a sense that
19 there's a questioning of the integrity of the
20 staff if there's some sort of communication. And
21 I just would like to challenge that -- that
22 concept. You know, as long as communication is
23 made, there's a record, maybe not necessarily as
24 formal as a court reporter, but an indication of
25 what conversations took place, what was talked

1 about, and were any decisions made; if not, note
2 so. Maybe that's enough.

3 But we need to have communication, I
4 think, between all the parties and the CEC staff
5 if we're going to handle the volumes, the
6 caseloads, the diversity of issues, the -- you
7 know, it's just -- it seems to be growing quite
8 rapidly, and having the staff educate us as to
9 what we need to look at and what we need to
10 understand are the issues that are pressing to
11 them, and vice-versa, seems to be in the interest
12 of all parties.

13 Thank you.

14 PRESIDING MEMBER LAURIE: Thank you.

15 Yes, sir.

16 MR. MURPHY: My name is Mike Murphy.

17 I'm an intervenor at Metcalf.

18 I'm not being disrespectful in any way.

19 I'm wondering why we don't have the CEC's
20 attorneys helping give points of view about how
21 the staff process goes, and not just Mr. Harris'.
22 That's a question. Is there a reason we don't
23 have legal people here --

24 PRESIDING MEMBER LAURIE: No. I --

25 MR. MURPHY: -- for CEC?

1 PRESIDING MEMBER LAURIE: -- I haven't
2 requested legal staff be here. I think Mr.
3 Therkelsen, who has been doing this for about 45
4 years, knows -- is that close?

5 (Laughter.)

6 PRESIDING MEMBER LAURIE: For a very
7 long time, is familiar with the process. To the
8 extent that legal interpretations would be
9 requested, then the committee is free to ask our
10 attorneys outside of this room.

11 MR. MURPHY: Thank you.

12 I'm fairly new. I became an intervenor
13 just a few months ago in a process that's been
14 going on since April. I don't understand a lot,
15 so I'm going to ask. Is the mandate of the CEC to
16 site power plants, or to protect the public from
17 adverse impacts of power plants -- from harm, in
18 other words -- or both, somehow. I -- I need to
19 read a little bit.

20 PRESIDING MEMBER LAURIE: I think the
21 charge is clearly both. Commissioner Rohy, would
22 you disagree with me?

23 COMMISSIONER ROHY: No, I would not.

24 MR. MURPHY: Okay. Good, thank you.

25 On electronic filing, it sounds great.

1 But since I know plenty of people who don't have
2 computers, I would ask that the -- the time
3 requirements remain the same so that people who
4 have to get the hard copy by snail mail have the
5 time to get it. I love the electronic mailing,
6 and it's helped tremendously for me.

7 On deadlines for filing to become an
8 intervenor, I'm not sure I see any hardship on the
9 part of an applicant, since when I became an
10 intervenor I was told that I would be entitled to
11 communications from that point on. And they
12 didn't have any requirement to bring me completely
13 up to speed from the beginning of the process.

14 So if somebody just now becomes aware of
15 a power plant being sited in their backyard, then
16 I don't understand why there's any problem with
17 them becoming an intervenor right then, no matter
18 when along the timeline it is. That's just my
19 take on it. Like I said, I -- I came in late.

20 And I think the Public Adviser's Office
21 is fantastic. I recently asked what is the lawful
22 powers that the CEC has to do with eminent domain
23 questions, and an attorney, I've forgotten his
24 name --

25 PUBLIC ADVISER MENDONCA: Mr. Blees.

1 MR. MURPHY: -- Mr. Blees, came up with
2 a three page document that, for a layman, was very
3 good, trying to explain a very difficult concept,
4 as he put it, for attorneys.

5 PRESIDING MEMBER LAURIE: And a very
6 short document for an attorney, also.

7 (Laughter.)

8 PUBLIC ADVISER MENDONCA: We asked for
9 one page.

10 (Laughter.)

11 COMMISSIONER ROHY: For an attorney, he
12 complied.

13 MR. MURPHY: Well, I thank him very
14 much, and it's nice to know that the public is
15 entitled to and gets the kind of education that
16 they need to get involved in this.

17 Monthly workshops was mentioned by
18 someone, and that sounds good to me. Some kind of
19 standard timing, it's not necessarily that easy to
20 contact a whole bunch of people who are
21 interested, especially without e-mail, and get
22 them to a meeting seven days later. Some kind of
23 established regular get-togethers would be neat.

24 And I -- just to repeat myself from
25 earlier, I wanted to mention again that I think

1 any reduction of public input and opportunity for
2 public intervention, it just should not be
3 shortened, it should be increased, enhanced. Hire
4 more staff for the Public Adviser's Office,
5 anything you can do along that line. I appreciate
6 seeing that all of you seem to be very interested
7 in protecting that -- that ideal.

8 So thank you very much.

9 PRESIDING MEMBER LAURIE: Thank you,
10 sir.

11 Okay. Now.

12 PUBLIC ADVISER MENDONCA: I do have --
13 I've been waiting for the pause. I do have a
14 communication from --

15 PRESIDING MEMBER LAURIE: Well, I'm not
16 sure that you got one.

17 (Laughter.)

18 PUBLIC ADVISER MENDONCA: Sorry.

19 PRESIDING MEMBER LAURIE: Okay. Go
20 ahead, Roberta.

21 PUBLIC ADVISER MENDONCA: Thank you.

22 Mr. Chairman, I have a letter from a
23 member of the public from the Morro Bay process,
24 and her comments to me particularly fit right into
25 anybody else's agenda. Her name is Ellen Stirtz,

1 and she would like to call it to the attention of
2 the Energy Commission --

3 PRESIDING MEMBER LAURIE: Okay. Let me
4 interrupt a second. I want to make sure that you
5 can say what you want to say, if it's relating to
6 a specific project.

7 PUBLIC ADVISER MENDONCA: No, it's not.
8 It has to do with actually the functioning of
9 public participation, and she apparently at one
10 time was a Energy Commission employee and was
11 aware of the fact that there used to be Energy
12 Commission funding for intervenors. And so it was
13 her perspective that given the community that she
14 lives in, the likelihood of having independent
15 resources to fund participation is lacking, and
16 that the Energy Commission should reconsider the
17 element of supplying a program for intervenor
18 funding.

19 PRESIDING MEMBER LAURIE: When do you
20 think that was?

21 PUBLIC ADVISER MENDONCA: It was before
22 I was here.

23 PRESIDING MEMBER LAURIE: Mr.
24 Therkelsen?

25 MR. THERKELSEN: I don't believe that

1 there was ever a Commission intervenor funding
2 program for siting -- for siting projects. There
3 had been some intervenor funding for some other
4 activities, but they were not along the --
5 involved with siting at all.

6 PUBLIC ADVISER MENDONCA: And I also
7 received a communication from the Southeast
8 Alliance for Environmental Justice, SAEJ, and they
9 are former intervenors. They were participants in
10 the San Francisco siting cases. And they are
11 interested because of the future of potential
12 activity in their area.

13 There are three points. Mainly what
14 they would like to point out would be to make
15 certain that our regulations are, in fact, CEQA
16 compliant, and that in assuring that they are CEQA
17 compliant that we also look to the EPA guidance
18 and CEQA guidance, especially in the areas for
19 minority populations and for guidance on
20 environmental justice issues.

21 It's a very well written letter, which I
22 will turn in with the other comments.

23 PRESIDING MEMBER LAURIE: Roberta,
24 question. Environmental justice, and we're really
25 not getting into that deeply, but I know these

1 folks raised it. And I know the concept of
2 environmental justice refers to minorities.

3 At least that's just my understanding.

4 PUBLIC ADVISER MENDONCA: Right.

5 PRESIDING MEMBER LAURIE: Does it refer
6 -- does it refer to -- is the concept that there's
7 a --

8 PUBLIC ADVISER MENDONCA: Let me help
9 you out here.

10 PRESIDING MEMBER LAURIE: -- there's a
11 -- a finding of, in some circumstances,
12 extraordinary impact on minority neighborhoods, or
13 economically deprived neighborhoods? Because the
14 two could be different.

15 PUBLIC ADVISER MENDONCA: Well, the
16 analysis is for all of those. And my
17 understanding of the environmental justice
18 analysis is, one, is taking a look at where a
19 potentially polluting facility might be placed,
20 and in that analysis it is important that existing
21 polluting or toxic facilities are analyzed; that
22 the demographic makeup both as to population
23 ethnicity and to financial standing, that all of
24 that is factored into whether this area becomes an
25 environmental justice area. And if that's the

1 case, then there are some mitigation measures that
2 must be considered.

3 And I could be -- stand corrected from
4 anybody, but that's a thumbnail sketch of
5 environmental justice.

6 COMMISSIONER ROHY: How does that work?
7 If it's a environmentally -- excuse me, an
8 economically deprived -- what perhaps the right
9 word is, lower economic activity area, and they
10 actively seek a power plant, is it still an
11 environmental justice issue?

12 PUBLIC ADVISER MENDONCA: I don't think
13 the fact that they seek the power plant means that
14 it could not potentially have an environmental
15 justice issue. The issue then would be what
16 impact -- it behooves a greater public outreach,
17 it behooves greater attempt to get public
18 participation, and it behooves an education
19 process so that the decision in regard to, for
20 example, a power plant siting, is in fact
21 reflective of the community's decision.

22 Because I think the underlying theory
23 behind environmental justice is that these are
24 populations that normally do not participate in
25 decision making; therefore, for whatever reason,

1 they have ended up with a disproportionate amount
2 of impact from potentially toxic projects.

3 PRESIDING MEMBER LAURIE: Well, we have
4 yet to address head-on as a matter of policy the
5 whole issue of environmental justice. It is
6 rising, and I think it will be dealt with on a
7 policy basis. A pretty complicated set of
8 questions. Most industrial projects go into
9 industrial areas where the surrounding residential
10 areas are of less economic value. That's number
11 one.

12 Number two, most industrial projects go
13 into areas where land prices are less expensive.
14 Which means neighborhoods of less economic value.
15 Now, to the extent that that's discriminatory,
16 well, that makes for some very interesting policy
17 questions, which we will be discussing.

18 COMMISSIONER ROHY: Well, my question
19 was does it -- is it -- and this may be just
20 amusing, it was not a solution at this point. But
21 should a community actually desire such a
22 facility, does that change the environmental
23 justice issue? And I don't -- we've never had
24 those discussions.

25 PUBLIC ADVISER MENDONCA: Okay.

1 PRESIDING MEMBER LAURIE: Okay. What
2 else?

3 MS. KING: I have a question. My name
4 is Donna King, and I'm a private citizen. And I
5 would -- I would have to ask how would you define
6 community.

7 PRESIDING MEMBER LAURIE: Okay. Thank
8 you.

9 We got sidetracked. That's my fault.

10 PUBLIC ADVISER MENDONCA: No. The last
11 comment is kind of an eclectic collection back on
12 -- the question for the intervenors, and for --
13 for other participants was did they deem that our
14 process was CEQA equivalent, and there were four
15 answers coming back from intervenors that felt
16 that it was not a CEQA equivalent process.

17 MS. KING: Thank you.

18 COMMISSIONER ROHY: Sorry, I didn't see
19 you --

20 PUBLIC ADVISER MENDONCA: That it was
21 not a CEQA equivalent process, but then in the
22 course of the discussion I believe their concerns
23 relate to the alternatives analysis, and so
24 perhaps if our alternatives analysis took that --
25 what was previously accomplished with the NOI,

1 perhaps that decision or thought that it was not
2 CEQA compliant would change.

3 PRESIDING MEMBER LAURIE: Okay. Thank
4 you.

5 What are you going to comment to at this
6 point, Mr. Williams? Because I'd like to get back
7 on track.

8 MR. WILLIAMS: Just two brief points,
9 since I won't be here tomorrow. Thank you, sir.

10

11 My question and comment relates to
12 delegation. I hope maybe you will answer me
13 today, but provide an answer in the record, as
14 well.

15 The case in point is my understanding is
16 the Bay Area Air Quality Management District, in
17 my part of the world does the air emissions
18 analysis. But my impression is that they were
19 formulated to do something totally different than
20 air quality analysis for power plants.

21 I was dumbfounded to find that there
22 were only three air quality monitoring stations in
23 the South Bay. So that told me they were probably
24 trying to prove that the Bay Area EPA regs rather
25 than regulate power plants. But that's a bit of

1 an aside.

2 My real question to you is what are the
3 staff requirements in attending a meeting of the
4 Bay Area Air Quality District with respect to the
5 ex parte discussions, if the Bay Area Air Quality
6 District finding is going to be a straight
7 passthrough, then the -- the Commission staff is
8 indeed a project manager to a contractor, and the
9 substantive issues are occurring at the meetings
10 of the Bay Area Air Quality District. And that in
11 turn raises a somewhat larger issue, which is the
12 delegation of powers between agencies.

13 The City of San Jose has tried to
14 delegate to the CEC some of their responsibilities
15 for an EIS --

16 PRESIDING MEMBER LAURIE: Time out, Mr.
17 Williams. We're not going to talk about your
18 project anymore.

19 MR. WILLIAMS: Forgive me. The generic
20 issue is delegation, and shouldn't that memorandum
21 be a public document before it serves as the basis
22 for an environmental impact statement.

23 Forgive me, I'm just trying to make the
24 example specific, rather than so unreal that you
25 couldn't conceive of the situation.

1 PRESIDING MEMBER LAURIE: Okay. I'd
2 like to see hands of those who cannot be here
3 tomorrow that have additional comment to make
4 today. Because after we're done with that, I want
5 to get back on track until we go home.

6 Mr. Burk.

7 MR. BURK: I could hold these comments
8 depending on how --

9 PRESIDING MEMBER LAURIE: Sir, why don't
10 you come forward.

11 MR. BURK: I said if your intent is to
12 go back to the Warren Alquist recommendations --

13 PRESIDING MEMBER LAURIE: Yes.

14 MR. BURK: -- I only have comments on
15 two of them.

16 PRESIDING MEMBER LAURIE: Okay. Let's
17 just say I don't know how far we're going to get.

18 MR. BURK: That's the next one, and
19 number ten.

20 PRESIDING MEMBER LAURIE: Okay. Well,
21 that's -- we'll go through the next one, and then
22 if we run out of time we'll make sure you're heard
23 before you go home.

24 MR. BURK: Okay. Or I could submit them
25 in writing.

1 PRESIDING MEMBER LAURIE: Okay. That'd
2 be great.

3 MR. BURK: This pertains -- I believe
4 we're past the --

5 PRESIDING MEMBER LAURIE: Well, let me
6 call the item, first.

7 MR. BURK: Oh, I'm sorry.

8 PRESIDING MEMBER LAURIE: Okay. So we
9 can have an explanation from Mr. O'Brien.

10 Terry, we're on Item Number Five, I
11 believe.

12 MR. O'BRIEN: That's correct. Item
13 Number Five refers to agency coordination. And
14 basically, staff has put forward a recommendation
15 that we believe might streamline the siting
16 process to amend the Warren Alquist Act to require
17 agencies to submit their final reports 180 days
18 from the date that the Commission deems a filing
19 to be data adequate.

20 That would pertain to several agencies,
21 like the California Department of Fish and Game,
22 local land use agency, local air pollution control
23 district, regional water quality control board, et
24 cetera.

25 PRESIDING MEMBER LAURIE: And the

1 rationale for the proposal is what?

2 MR. O'BRIEN: The rationale for the
3 proposal is that a delayed report from one of
4 those agencies would prohibit the Commission from
5 fulfilling its mandate under the Warren Alquist
6 Act in terms of making decision within 365 days on
7 a project, and that if, in fact, this were put
8 into the Warren Alquist Act, it would have more
9 force than in the -- the Commission's regulations.
10 It would be a directive basically then from the
11 legislature to these other agencies.

12 PRESIDING MEMBER LAURIE: Okay.
13 Comments on the proposal. Mr. Burk, did you wish
14 to comment? Mr. Alvarez, Mr. Burk was up first.
15 Mr. Burk, why don't you go ahead and offer your
16 comment.

17 MR. BURK: Staff recommendation number
18 five for changes to the Warren Alquist Act is
19 another example of the need to extend the
20 permitting cycle to 18 months. Other agencies
21 face the same time restraints as the Energy
22 Commission. By requiring reports, or final
23 reports in just 180 days, the risk of some
24 significant factors being overlooked or not
25 completely examined is greatly increased.

1 By allowing these agencies 12 months to
2 complete their work, the EC would still have six
3 months to integrate these final reports into the
4 process, which is its goal for this proposal. The
5 difference would be that the Commission staff and
6 the other stakeholders could have more confidence
7 in the agency reports, or at least would -- one
8 would assume such.

9 Thank you.

10 PRESIDING MEMBER LAURIE: Thank you,
11 sir.

12 Mr. Alvarez.

13 MR. ALVAREZ: Good afternoon,
14 Commissioners.

15 I guess my only question is -- is the
16 category in which this issue is identified. On
17 attachment three, the staff identifies a
18 memorandum of understanding with a series of these
19 agencies. And I guess I -- my question is what's
20 -- what's broken here. Is it non-compliance with
21 the MOUs, or the inability to enforce the MOUs by
22 the agency, by the Commission.

23 MR. THERKELSEN: Bob Therkelsen
24 speaking.

25 In some cases it's been both. In some

1 cases, they have -- we have MOUs, but they have
2 not been complied with. In other cases, we don't
3 have MOUs, and we need to have that. It would be
4 helpful to have that legislative recognition of
5 the timeframes.

6 MR. ALVAREZ: Okay. I just needed a
7 clarification. I guess from my perspective it
8 seems like an administrative issue to be dealt
9 with.

10 MS. EDSON: Karen Edson, for IEP.

11 This -- I guess this is something that
12 we don't have a problem with, necessarily, but it
13 was not clear to us that it mattered very much.
14 That if the agencies are refusing to comply with
15 the regulatory deadlines, is there a reason to
16 think that putting it in statute will make a
17 difference.

18 So I guess the real question, I know
19 when I direct my kids to do something, if I don't
20 create a consequence for failing to do it I very
21 often don't get a lot of compliance.

22 PRESIDING MEMBER LAURIE: I think the
23 rationale from -- from our perspective is that we
24 want all state agencies to understand that the
25 timeframe set forth in Warren Alquist is a state

1 requirement. It's a state mandate on state
2 agencies. It's not a state mandate on the
3 California Energy Commission ignoring the
4 necessity for input from other agencies, so that I
5 don't want other agencies to not be concerned
6 about our time constraints. It should be their
7 time constraints, as well. That's the idea.

8 MS. EDSON: And I think we certainly
9 think that's appropriate. Maybe you should
10 incorporate something like a compliance report to
11 the budget committees of the legislature on a
12 quarterly basis, or something of that sort.

13 But truly, I mean, it's -- without a
14 consequence of some sort, or some -- some at least
15 implication that there might be a consequence, I
16 think -- think about that.

17 PRESIDING MEMBER LAURIE: Mr. Williams.

18 MR. WILLIAMS: Just a brief question, if
19 I may. A city is often required to do an EIS
20 before it can make a general plan amendment.

21 PRESIDING MEMBER LAURIE: An EIR.

22 MR. WILLIAMS: And they are -- excuse
23 me, an EIR. So it seems to me we get into a
24 chicken and egg proposition that keeps a 12 month
25 siting process from being possible in the event

1 that a zoning change is required before the CEC
2 can issue their final report.

3 So could you please explain how the 12
4 month process is possible unless the city is
5 persuaded to make its changes based on this
6 preliminary document that earlier this afternoon
7 we heard was -- was not particularly complete or
8 appropriate?

9 PRESIDING MEMBER LAURIE: Yeah, that's
10 the subject of a different item, is it not?

11 MR. O'BRIEN: That'd be number six, the
12 next item.

13 MR. WILLIAMS: Excuse my --

14 PRESIDING MEMBER LAURIE: Any additional
15 comments on Item Five?

16 COMMISSIONER ROHY: Commissioner?

17 PRESIDING MEMBER LAURIE: Commissioner
18 Rohy.

19 COMMISSIONER ROHY: Just a question to
20 staff here. If we went forward with the 180
21 degree -- 180 day limit as -- we all are getting
22 tired, I think, I apologize -- 180 day limit for
23 these agencies, what do you think their views
24 would be as the developer proposed changes, as we
25 discussed this morning, that were brought about

1 through public comment. Would this have an impact
2 on their view of when the 180 days started?

3 MR. THERKELSEN: In terms of when the
4 180 days starts, data adequacy right now is what
5 we would be proposing as the start of that. I
6 think two consequences would happen.

7 Number one, they would take perhaps more
8 seriously their role during data adequacy. When
9 we ask them to review an application and comment
10 on it, we're probably more likely to get comments
11 from them because they realize that there is a
12 legislative timeframe that they have to live under.
13 I also think they probably would be a little more
14 vociferous if there were project changes that
15 impacted what they have to do in the schedule they
16 have to perform under.

17 So I think that would make them a little
18 more of a partner in the siting process, rather
19 than a perhaps observer, as sometimes appears to
20 be the case.

21 PRESIDING MEMBER LAURIE: Thank you.

22 Okay. Let's go to the next item, Mr.
23 O'Brien.

24 MR. O'BRIEN: Item Number Six is local
25 land use decisions. Staff is suggesting that the

1 Warren Alquist Act be amended to allow the
2 Commission to unilaterally extend the schedule if
3 necessary to allow adequate time to enable the
4 local agency to change the land use designation of
5 the project site.

6 In addition, we're suggesting that the
7 act could be amended to require the local land use
8 agency to use the Commission's Presiding Member's
9 proposed decision as the environmental document,
10 the EIR equivalent, for making its decision on
11 whether to change the zoning of the site and/or
12 the general plan.

13 PRESIDING MEMBER LAURIE: Okay.

14 Comment, Mr. Williams.

15 MR. WILLIAMS: If I may, let the record
16 show that I make my comment without repeating it.
17 But the -- the second, the previous comment.

18 The second point would be that yes, I
19 would -- I checked the wrong box on the form I
20 submitted. Yes, I would recommend a change,
21 rather than no. The change I would recommend is
22 this multi-track process wherein you are only
23 mandated to meet the one-year schedule if you're
24 coming in with a standard plant on owned land that
25 has been effectively site banked.

1 The minute you come in and start
2 pleading for zoning changes, the 12 month schedule
3 is not feasible, because the city for an EIR is
4 forced to use a preliminary document that our
5 discussion just showed was probably not adequate
6 in -- respects.

7 So again, I think a multi-schedule
8 process needs to be one of the recommendations
9 that comes out of this hearing.

10 Thank you.

11 PRESIDING MEMBER LAURIE: Ms. Edson,
12 before you comment, let me ask staff a question.

13 Mr. Therkelsen, Mr. O'Brien, under
14 current regulations, including modifications to
15 110, or as reflected in 110, can you clarify what
16 the rule is regarding the necessity of local
17 zoning compliance.

18 MR. O'BRIEN: Well, the Warren Alquist
19 Act requires a facility to be in compliance with
20 applicable laws, ordinances, regulations, and
21 standards. If it's not, the Commission could
22 override, but it could only do so if it made a
23 couple of findings. However, you know, the Warren
24 Alquist Act does require compliance with laws,
25 ordinances --

1 PRESIDING MEMBER LAURIE: So you are
2 satisfied not that the local agency must simply
3 report on the ramifications of lack of compliance,
4 but actually go through legal process to make a
5 project consistent with local ordinance, including
6 rezonings or general plans as may be appropriate.

7 MR. O'BRIEN: Yes. The Commission --
8 the Commission in the siting process wants to know
9 whether or not the facility proposed by an
10 applicant is going to comply with the local
11 agency's land use designations, general plan
12 zoning, et cetera. When an applicant proposes a
13 project that is not in compliance it greatly
14 increases the uncertainty regarding a project, and
15 it also makes it very difficult for the Commission
16 to process that sort of application in a 12 month
17 timeframe.

18 So what we're suggesting is that when
19 you have those sorts of complex difficult issues
20 in dealing with local agencies, that the
21 Commission may need to extend the timeframe for
22 that sort of project.

23 PRESIDING MEMBER LAURIE: Okay.

24 MR. THERKELSEN: Excuse me,
25 Commissioner. Let me add one other thing, though,

1 to that -- to that response.

2 If a project is in non-conformance, as
3 Terry said earlier, that doesn't mean the
4 Commission can't permit it. Again, it can permit
5 it, it can override it. It does have to consult
6 with the local agency. It has to get from them
7 information on what they would require or expect
8 to bring it into conformance. And then if it's
9 still -- the Commission still wants to override
10 it, it has to make specific findings that there
11 are no alternatives that are more feasible, and
12 also findings of basically public convenience and
13 necessity.

14 PRESIDING MEMBER LAURIE: So
15 technically, it -- an applicant need not go
16 through the process.

17 MR. THERKELSEN: That's correct.

18 PRESIDING MEMBER LAURIE: Ms. Edson.

19 MS. EDSON: I'm Karen Edson, for IEP.

20 Just as a general comment. I'm not
21 aware of any applicant that does not want to be in
22 full compliance with local ordinances,
23 regulations, and standards. As a general matter,
24 the development committee does not view local
25 override as an option of first resort. Indeed, I

1 think bringing these matters into compliance is
2 really very important, and something that has to
3 be dealt with.

4 Now, I really just wanted to come up and
5 reiterate something that I said earlier, that this
6 is an area that IEP recognizes needs some very
7 serious attention, so that we don't get into the
8 -- the stutter step kind of process that we face
9 in the case of the Sutter plant. And we want to
10 be very clear and specific about what we come
11 forward with. Hopefully, to get around some of
12 the issues that Commissioner Rohy was identifying
13 and earlier questions from Mr. Harris.

14 So we -- we will come forward, and we
15 will put it in writing. We'll circulate it to all
16 interested parties, and --

17 PRESIDING MEMBER LAURIE: And that's
18 going to happen sometime --

19 MS. EDSON: -- I -- I can't commit to do
20 it by the end of this week, but --

21 PRESIDING MEMBER LAURIE: But it will be
22 submitted in time for consideration for our
23 process?

24 MS. EDSON: Absolutely. Yes. Yes,
25 that's our intent.

1 Thank you.

2 PRESIDING MEMBER LAURIE: Mr. Harris.

3 MR. HARRIS: Actually, I don't have any
4 further comment. I just wanted to know if
5 tomorrow is now today, Commissioner, and whether
6 you have additional questions for me.

7 COMMISSIONER ROHY: Well, I was begging
8 time for myself, too.

9 (Laughter.)

10 MR. HARRIS: I will be here tomorrow.

11 COMMISSIONER ROHY: Thank you.

12 PRESIDING MEMBER LAURIE: Mr. Musseter.

13 MR. MUSSETER: These comments grow out
14 of my observation of what happened in Sutter, and
15 then also what I'm hearing here at various times,
16 including here today. This concerns the subject
17 of farm land.

18 Farm land is -- should not be regarded
19 as sacrosanct by the Energy Commission. It's the
20 residual or default classification in California.
21 So a great deal of the land is classified as,
22 quote, farm land or agricultural, for lack of
23 anything better.

24 All farm land is not necessarily equal.
25 There's a great deal of it that is of quite low

1 value, range land, grazing pasture land, dry land.
2 And it's a complicated subject. But you could
3 quickly get a pretty good handle on it by
4 considering the University of California's old
5 story index system for ranking the productive
6 ability of soils. It's just a simple scale, zero
7 to 100, and also then taking into account the --
8 whether or not irrigation water's available, and
9 then finally what crops and yields of those crops
10 can be grown on those soils.

11 Now, I don't know how this is going to
12 play out. Of course, I guess none of us does.
13 But it would seem, from what we've heard this
14 afternoon, that the FSA, the -- or the -- I don't
15 know which Mr. Jeffrey's referred to, the final
16 staff assessment or the preliminary staff
17 assessment, as being a complete environmental
18 document. But in any case, both of those
19 documents see the light of day well before the
20 proposed, or the -- the Presiding Member's report,
21 do they not? By several months.

22 So if you could see your way clear
23 eventually to designating an earlier report occurs
24 in your siting, 12 month siting process, so that
25 the local government then would have time to act

1 and make its land use changes in its normal
2 process, that would seem to me to be the most
3 sensible objective to strive for here, if you can
4 possibly do it.

5 That's my main -- those are my comments.
6 Thank you very much.

7 PRESIDING MEMBER LAURIE: Thank you,
8 sir. I think -- did you have a question?

9 COMMISSIONER ROHY: I just wanted to
10 comment, reiterate my comment to Mr. Harris, is
11 that I have a concern as a Commissioner,
12 certifying a document that I had no part in
13 preparing and had no idea of how it was prepared.

14 MR. MUSSETER: Right, except that his
15 response, I think, to that was that you'd have to
16 have a new step in your process where the full
17 Commission would --

18 COMMISSIONER ROHY: But just having it
19 come in front of a business meeting and voting on
20 it, it's voting in the black, or in the dark.

21 MR. MUSSETER: Could be.

22 (Laughter.)

23 COMMISSIONER ROHY: That's not what I'm
24 -- I would --

25 MR. MUSSETER: I understand.

1 COMMISSIONER ROHY: I certainly don't
2 hold that as part --

3 MR. MUSSETER: I don't know how you get
4 around that. Yeah.

5 COMMISSIONER ROHY: Yes. That's the
6 problem I have.

7 MR. MUSSETER: Yeah. But you can see
8 this chicken and egg problem that was encountered
9 at Sutter is not satisfactory.

10 COMMISSIONER ROHY: Without -- without
11 Sutter, yes. Everywhere, in every case. We have
12 similar cases.

13 MR. MUSSETER: Yeah, anytime you have a
14 green field you're going to probably run into
15 this, or at least 80 or 90 percent of the time.

16 PRESIDING MEMBER LAURIE: Thank you,
17 sir.

18 Additional comments on this question?

19 PUBLIC ADVISER MENDONCA: Mr. Chairman,
20 I have tallied the comments that I have received,
21 and there were seven comments. None of them
22 supported extending the timeframe for the local
23 land use decision. And one amplification came
24 from the -- Allen Ramo, the professor involved
25 with Golden Gate University, with the Southeast

1 Alliance for Environmental Justice. And his point
2 was that because local land use decisions are
3 often a spot where a minority population has an
4 opportunity to have a representative, that a move
5 to usurp the local control would then be a move
6 against environmental justice.

7 PRESIDING MEMBER LAURIE: Okay. I would
8 like to move on to the next item, power plant
9 jurisdiction, which would provide for Energy
10 Commission jurisdiction for non-thermal plants.

11 MR. O'BRIEN: Commissioner, I'm
12 wondering, in the interest of time, as to whether
13 or not we can lump seven, eight and nine. They're
14 all jurisdictional questions, in addition to
15 seven, which you just indicated.

16 Eight goes to the issue of repowering
17 where the staff's recommending that the Warren
18 Alquist Act be amended to specify that the
19 Commission would have jurisdiction over any
20 project at an existing site whenever 50 megawatts
21 of new capacity is added, regardless of what
22 happens to the final generating capacity at that
23 site.

24 And then number nine, on transmission
25 line jurisdiction, where staff believes that

1 consolidating siting authority for all large power
2 plants and transmission lines in one agency is
3 appropriate, and would result consistency of
4 review for similar projects, and reduce regulatory
5 overlap.

6 PRESIDING MEMBER LAURIE: Okay. Thank
7 you. Consider the items consolidated.

8 Public comment.

9 MR. ALVAREZ: Manuel Alvarez, Southern
10 California Edison.

11 A couple of comments. Item seven,
12 extending the jurisdiction to non-thermal
13 facilities. I guess I don't see an outpouring of
14 need for that, or I haven't witnessed that in
15 terms of non-thermal facilities. So I guess I'm
16 questioning the need, or what's actually broken
17 there.

18 The item number nine, transmission line
19 jurisdiction, the issue of one -- one facility in
20 the State of California, Edison had taken the
21 position in the past that we agreed with the one
22 siting authority. Unfortunately, we just happen
23 to agree that it should stay and remain with the
24 Public Utilities Commission, and its relationship
25 with the ISO and the Electricity Oversight Board.

1 So on this particular activity, we could not
2 support at this time the Commission's jurisdiction
3 being extended to transmission facilities.

4 PRESIDING MEMBER LAURIE: So are you
5 recommending that siting jurisdiction be
6 transferred to the PUC?

7 MR. ALVAREZ: Siting jurisdiction for
8 transmission lines currently rests with the PUC.

9 PRESIDING MEMBER LAURIE: Right. But I
10 thought you said you were in favor of
11 consolidation.

12 MR. ALVAREZ: The only part that the
13 Energy Commission has jurisdiction on is with the
14 merchant facility at the first point of
15 interconnection, and that's part of the project
16 facility. So technically, I guess I would not
17 consider that, even though it's a wire, it's not
18 part of the bulk transmission system because it's
19 part of the individual project's responsibility.

20 So there's a distinction I make at that
21 point.

22 MR. O'BRIEN: I would just note that the
23 Commission does have jurisdiction over independent
24 transmission lines not associated with a
25 individual power plant application, as long as

1 that individual transmission line hooks up to a
2 thermal power plant over which the Commission
3 would have jurisdiction.

4 I would also note that the CPUC's
5 jurisdiction over transmission line only extends
6 to those transmission lines which would be
7 affiliated with the IOUs, not with any other
8 entity.

9 PRESIDING MEMBER LAURIE: And who has
10 jurisdiction over interstate transmission lines?

11 MR. ALVAREZ: FERC jurisdiction, is my
12 understanding. The ISO is a FERC jurisdictional
13 entity also.

14 MR. O'BRIEN: Well, we see interstate
15 transmission lines that have come under, for
16 example, jurisdiction of other agencies. I think
17 there was a transmission line that ran from Reno
18 to Alturas, and that line was under jurisdiction
19 of several different agencies, including federal
20 agencies.

21 PRESIDING MEMBER LAURIE: All right.
22 Thank you, sir.

23 MS. EDSON: IEP, with regard to the two
24 items, seven and eight, dealing with the expansion
25 of CEC jurisdiction. IEP opposes those proposals.

1 In an environment where the -- what we keep
2 hearing from staff is that they have too much work
3 to do, that they can't hire the experts to deal
4 with specific issues in certain cases threatens
5 the schedule of the projects, our -- our view is
6 that the last thing we should be trying to do is
7 to expand the state's jurisdiction into areas
8 where, to my knowledge, there's not a compelling
9 case to be made for the need to do that.

10 I'm not, for example, hearing about a
11 flood of repowering projects carefully sized to
12 avoid the CEC's jurisdiction. And the renewable
13 projects and the small projects that are out there
14 are, for the most part, probably funded by -- the
15 renewable products are probably those that are
16 funded by the Commission through the renewable
17 program.

18 I think we shouldn't be imposing these
19 kinds of obligations on distributed generation,
20 for example, as well.

21 With regard to transmission, the
22 transmission line jurisdiction issue, IEP has
23 taken the position in the past and continues to
24 believe that transmission and power plant
25 jurisdiction should be consolidated in the same

1 agency. I'm not convinced that it makes sense to
2 put forward in the context of proposals to improve
3 the power plant siting process, which we consider
4 to be a kind of preeminent objective of this
5 process. But we do agree that consolidating that
6 jurisdiction in one place is a reasonable policy.

7 COMMISSIONER ROHY: May I ask a
8 question?

9 PRESIDING MEMBER LAURIE: Ms. Edson.

10 COMMISSIONER ROHY: Karen, on number
11 eight, repowering. I just want to test the logic
12 here for a moment. Whether there are many
13 repowerings or few is not the issue I want to
14 bring up. But should there be a thousand megawatt
15 plant that's repowered with another thousand
16 megawatt plant, why is that plant -- why, in your
17 view, would that plant be exempt from our process,
18 whereas a green field would go through our
19 process?

20 MS. EDSON: It's not adding 50 megawatts
21 or more.

22 COMMISSIONER ROHY: But what is -- I --
23 but why? Why would you treat one plant
24 differently than another? Would that be an even
25 playing field?

1 MS. EDSON: I suppose for the same
2 reason that a local agency treats -- doesn't
3 necessarily require the same degree of oversight
4 for a remodeling project as it does for new house
5 construction. It's the scope of impacts, the
6 nature of the impacts are very different.

7 COMMISSIONER ROHY: But --

8 MS. EDSON: Okay.

9 COMMISSIONER ROHY: -- I have trouble
10 following the logic. I'm not arguing one way or
11 another, I just -- I'd like to understand more why
12 one is treated in one method, and one is treated
13 in the other.

14 MS. EDSON: You -- you're probably
15 encountering kind of the -- the normal industry
16 response, as well, that the -- an expansion of
17 state jurisdiction in an area where it doesn't
18 exist is not something that we're likely to
19 support in the absence of a compelling reason to
20 do it. So I guess, as Mr. Joseph took the half
21 empty half full, we would argue that the
22 obligation to demonstrate the need to do something
23 should rest with the state and starting to assert
24 new jurisdiction in this area.

25 And it's -- if it's not broken, don't

1 fix it. If we're not facing situations where
2 major projects are being proposed that -- where
3 impacts might be arising that the state feels are
4 being ignored by virtue of current court cases and
5 interpretation of law, then there's no reason to
6 fix it.

7 COMMISSIONER ROHY: I'm not arguing one
8 way or another. I just appreciate your expounding
9 on your answer. Thank you.

10 MS. EDSON: And the repowering projects
11 that I'm familiar with are all jurisdictional.
12 There -- there may be some that are not, but
13 that's my understanding.

14 COMMISSIONER ROHY: Well, at some point
15 I was arguing that we ought to lower our
16 jurisdiction to 20 megawatts, because I advocate
17 distributed generation and I'm sure we'd get a lot
18 of 19.9's in the state then.

19 MS. EDSON: But you wouldn't have been
20 amused then about -- what year was it, probably
21 1989, with legislation that proposed to lower the
22 Commission's jurisdiction to 49 megawatts.

23 (Laughter.)

24 MS. EDSON: There was a great deal of
25 industry interest in that legislation.

1 MR. HARRIS: I'm Jeff Harris.

2 Just briefly, on number nine. Again,
3 CalPine would like to generally echo the comments
4 from IEP, and also reiterate the need to have that
5 one agency with full powers, including right of
6 eminent domain, have that happen sooner than
7 later, because these are real world problems right
8 now for project developers. And so we'd ask that
9 you work on developing those solutions in parallel
10 with the rest of your siting work.

11 PRESIDING MEMBER LAURIE: Okay.

12 At this time I'd like to call on anybody
13 for final comments who cannot be present tomorrow.

14 MR. BURK: Jerome Burk again.

15 This comment is on the staff
16 recommendation number ten.

17 PRESIDING MEMBER LAURIE: Wait. I'm
18 sorry, did you have a comment, Mr. O'Brien?

19 MR. BURK: We haven't gotten there yet,
20 but I wasn't going to be here tomorrow, so.

21 PRESIDING MEMBER LAURIE: I'm sorry.
22 Hold on.

23 Did you have a comment?

24 MR. O'BRIEN: No.

25 PRESIDING MEMBER LAURIE: Okay. Sorry.

1 Go ahead, Mr. Burk.

2 MR. BURK: Okay.

3 COMMISSIONER ROHY: Could you speak up
4 just a little, please, Mr. Burk.

5 MR. BURK: Okay. Well, I happen to
6 agree with the staff recommendation number ten.
7 But I believe it's worth noting that the staff's
8 discussion makes what I consider a powerful case
9 for having the NOI process be placed on all
10 projects, including those that are now considered
11 exempt.

12 In the discussion, the staff notes, and
13 I quote, "In approving several geothermal power
14 plants that bypassed the NOI process, the
15 Commission performed several steamfield analyses
16 that concluded there were sufficient resources for
17 the life of these facilities. All of these
18 analyses turned out to be wrong." That's my
19 emphasis.

20 "This experience indicates the
21 difficulty in trying to quantify an unknown
22 resource and the potential for significant error",
23 unquote.

24 And based on this experience outside the
25 NOI process, I have to ask the question, will the

1 Commission's current analysis of gas-fired power
2 plants be shown erroneous in the future, and what
3 might be those impacts if that happens.

4 So while we cannot consider, or cannot
5 simply do nothing because we might make mistakes,
6 we should endeavor to reduce the risk of such
7 mistakes by erring on the side of caution through
8 the most exhaustive analysis possible, and I
9 believe that would be an extension of the current
10 AFC, or going back to the NOI process.

11 Thank you.

12 PRESIDING MEMBER LAURIE: Thank you.

13 Yes, sir.

14 MR. WILLIAMS: Robert Williams. I would
15 like to offer just one additional note of
16 explanation on page two of my attachment, item 11,
17 multiple site analysis.

18 I'm not sure I have a crystal clear view
19 of precisely how to proceed, but on the one hand,
20 a vendor should not be able to put every plant he
21 might ever want to build into one application and
22 have a meeting in San Francisco one night, a
23 meeting in San Jose the next night, a meeting in
24 Sacramento the third night, and ram it all
25 through, when at the same time in my proposal,

1 there should be enough geographic separation of
2 sites that some of the sites, if the primary site
3 particularly is in a EPA non-attainment area, then
4 one or two of the alternate sites ought to be in
5 an area that is meeting the EPA attainment
6 requirements.

7 So this, of necessity, will lead to some
8 diversity. My reason for suggesting that is that
9 the people who are then offering the clean near
10 zero release technology get to balance the
11 transmission line losses against the incremental
12 cost of the more polluting technology at a more
13 distant location. So this is letting the
14 economics handle the clean-up of the air in a way
15 that doesn't occur under current regulation.

16 Let me just close by thanking you for
17 holding this hearing, and for considering the
18 remarks. The work of the staff was particularly
19 helpful, and it's been fun to get back into a
20 business I retired from five years ago.

21 Thank you.

22 PRESIDING MEMBER LAURIE: Thank you, Mr.
23 Williams.

24 Ladies and gentlemen, we're going to
25 close the session for today. We will start again

1 at 0900 tomorrow morning, with the introduction of
2 Item Ten. We'll continue through Warren Alquist
3 Amendments, and through Modifications to Siting
4 Regs. We can only have the room until noon. I
5 see no reason why we cannot be completed in plenty
6 of time.

7 The testimony today has been excellent.
8 I offer our appreciation to the members of the
9 public for your input and your patience.

10 Commissioner Rohy, did you have any
11 closing comments?

12 COMMISSIONER ROHY: I'll echo your
13 comments. I've enjoyed listening to the diverse
14 opinions we have here today. It certainly helps
15 us all to attend such hearings and workshops so
16 that we can make more informed decisions.

17 PRESIDING MEMBER LAURIE: Thank you.
18 The meeting is closed, meeting is adjourned, and
19 we'll see some of you here at 9:00 o'clock.

20 (Thereupon, the Hearing was adjourned
21 at 4:30 p.m., to reconvene on Tuesday,
22 December 14, 1999, at 9:00 a.m.)

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25

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I, DEBI BAKER, an Electronic Reporter,
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